Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-196

THE STATE OF TENNESSEE, EX REL, ROBERT CONGER, BEN LANGFORD, and JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System,

PETITIONERS,

v.

MADISON COUNTY TENNESSEE, a political subdivision of the State of Tennessee; WALTER BAKER HARRIS, County Judge of Madison County, Tennessee; LEON JOHNSEY, Trustee of Madison County, Tennessee; and TRANSAMERICA INSURANCE COMPANY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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INDEX

Page

OPINION BELOW 2

JURISDICTION 2

QUESTION PRESENTED 2

STATUTORY PROVISION INVOLVED—
Federal Statute 4
State of Tennessee Statute 4

STATEMENT OF FACTS 6

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 12

APPENDIX A – Opinion Tennessee Supreme Court . 13

APPENDIX B – Opinion Court of Civil Appeals, Western Section, State of Tennessee 41

APPENDIX C – Petition for Rehearing, (denied), Supreme Court of Tennessee 44

APPENDIX D – Decision of the Supreme Court of Tennessee in the case of City of Harriman v. Roane County, Tennessee 46

APPENDIX E – Copy of the entire Tennessee Statute, Section 49-605, Tennessee Code Annotated 61

AUTHORITIES

CASES:

City of Harriman vs. Roane County, 553 S.W.2d 904, p. 907C 9

STATUTES:

Federal Statutes:

Title 28, USC, Sec. 1257(3) 2
Title 31, USCA, Sec. 1243(a)(4) 3
Title 31, USCA, Sec. 1243(4)(1) 4, 9, 10

Tennessee Statutes:

Sec. 5-924 Tennessee Code Annotated 11
Sec. 49-605 Tennessee Code Annotated 4, 9
Sec. 67-305(2)(a) Tennessee Code Annotated . . 9

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being the elected Board of Commissioners of the City of
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of the City of Jackson, Tennessee School System;
Residents of Madison County, Tennessee,

PETITIONERS,

v.

MADISON COUNTY, TENNESSEE, a political subdivision
of the State of Tennessee;

AND

WALTER BAKER HARRIS, County Judge of
Madison County, Tennessee;

AND

LEON JOHNSEY, Trustee of Madison County, Tennessee;

Residents of Madison County, Tennessee;

AND

TRANSAMERICA INSURANCE COMPANY,

Resident of the State of California

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

The Petitioners The State of Tennessee, Ex Rel Robert Conger, Et Al, pray that a Writ of Certiorari issue to review the Opinion and Judgment of the Supreme Court of the State of Tennessee rendered in these proceedings on the 26th day of March, 1979, rehearing denied May 29, 1979.

OPINIONS BELOW

The Opinion of the Supreme Court of the State of Tennessee, reported at 581 S.W.2d 632, appears at Appendix A, infra pp. 13. The Opinion of the Court of Civil Appeals, Western Section, State of Tennessee, as yet unreported, appears at Appendix B, infra pp. 41. The Circuit Court of Madison County, Tennessee entered judgment in favor of petitioners; the Court of Civil Appeals, Western Section, reversed the Circuit Court; the Supreme Court of Tennessee granted certiorari and, in a split decision, upheld the reversal, denying re-hearing.

JURISDICTION

The Judgment of the Supreme Court of the State of Tennessee was entered on the 27th day of March, 1979. See Appendix A, p. 13, infra. A Petition for Rehearing was duly filed and denied by the Supreme Court of Tennessee on the 29th day of May, 1979. See Appendix C, p. 44, infra. This Petition for Certiorari was filed less than ninety (90) days from the date aforesaid. The jurisdiction of this Court is invoked under *28 USC Sec. 1257(3)*.

QUESTION PRESENTED

The City of Jackson, Tennessee through its Mayor, Robert Conger, et al, filed a Quo Warranto proceeding against Madison County, Tennessee, and others, seeking

to enjoin Madison County, Tennessee and its officials from, among other things, using Federal Revenue Sharing Funds in a manner not "in accordance with the law and procedures applicable to the expenditure of its own revenue" as required by *Title 31, Sec. 1243(4)1, United States Code Annotated, (Federal Revenue Sharing Law)*. The Circuit Court of Madison County, Tennessee upheld the position of the City of Jackson. The Tennessee Court of Civil Appeals, Western Section, overruled the Circuit Court. The Supreme Court of Tennessee ruled against the City of Jackson's position solely on its interpretation of Tennessee Law, declaring that how Federal Revenue Funds are used under *Section 49-605, Tennessee Code Annotated* is not a federal question and that a county can use such funds without restriction "according to their own perceived demands and objectives." The Federal question was presented to the Tennessee Supreme Court under the following Assignment of Error:

"VII.

The Court erred in that its decision gives to funds derived from Federal Revenue Sharing grants a special protection not applicable to other funds appropriated by Madison County, Tennessee, which special classification is contrary to the specific provisions of Title 31, Sec. 1243(4) U.S.C.A. (Federal Revenue Sharing Law) which specifically provides that local governments:

> '(4) 1 . . . it will provide for the expenditure of amounts received under subchapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenue; . . .'."

Petitioner finds no federal court decision on the issue present herein and believes the Tennessee Supreme Court has decided the issue contrary to the manner a federal court will decide same.

The question thereby presented is:

1. Whether or not the decision of the Supreme Court of Tennessee interpreting *Section 49-605, Tennessee Code Annotated*, has caused such state statute to become in violation of the provisions of *Title 31, Section 1243(4)1, United States Code Annotated* by approving and compelling the counties in the State of Tennessee to use Federal Revenue Sharing Funds in a manner not "in accordance with the laws and procedures applicable to the expenditure of its own revenues."

STATUTORY PROVISION INVOLVED

Federal Statute

The Federal Statute involved is commonly referred to as the Federal Revenue Sharing Law and the specific Section invoked is contained in *Title 31, Section 1243(4)1*, which provides as follows:

> "(4) 1 . . . It will provide for the expenditure of amounts received under Sub-Chapter I of this Chapter *only in accordance with the laws and procedures applicable to the expenditure of its own revenues*; . . . ." (Emphasis supplied.)

State of Tennessee Statute

The Tennessee Statute involved is *Section 49-605, Tennessee Code Annotated*, and the applicable portions are copied with emphasis supplied, the entire Code Section appears as Appendix E, p. 61.

"49-605. LEVYING OF SCHOOL TAX - FUNDS - EXPENDITURE - FISCAL ACCOUNTING. - A. *For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes received from the state, county, and other political subdivisions, if any.*"

". . . *All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year. For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedures*: . . . ."

"B. *A city of special school district participating in state minimum foundation school program funds shall raise and expend annually for current operation and maintenance of its schools an amount of money in addition to the amount required to be raised by the county . . . .*"

STATEMENT OF FACTS

The facts relevant to the question presented by this Petition are uncontroverted and, therefore, may be introduced to the Court in a summary fashion.

Madison County, Tennessee operates a County School System in the area of the county outside of the City of Jackson; that the City of Jackson is the largest city within Madison County, Tennessee and operates a City School System within the city borders; that heretofore Madison County, Tennessee, through the Office of County Trustee, in accordance with requirement of *Sec. 49-605, Tennessee Code Annotated*, has apportioned with the City of Jackson School System all school revenues appropriated for current operation and maintenance purposes; that beginning in the fiscal year 1976-77 and continuing through the fiscal year 1977-78 to the present time, Madison County, Tennessee began appropriating to its school fund, for current operation and maintenance purposes, revenue derived both from local sources and from Federal Revenue Sharing Funds received from the Federal Government; that the County Trustee continued to apportion with the City of Jackson that portion of the school fund derived from its own revenue in accordance with *Section 49-605, Tennessee Code Annotated*, but, in furtherance of a deliberate plan of the Madison County Court and Budget Committee, refused to apportion that portion of the school fund derived from funds received under Federal Revenue Sharing; that for the 1976-77 fiscal year this resulted in a loss to the City of Jackson of $190,207.82; in the 1977-78 fiscal year the loss of the City of Jackson totaled $543,214.88; this loss to this City is a continuing loss; that the statewide result of the Tennessee Supreme Court decision is a loss of countless millions to all of

the other city school systems in the state;* that every dollar of Madison County's own revenue appropriated to its school fund for current operation and maintenance had to be apportioned with the City of Jackson School System on a basis of 48.561537 percent to the City and 51.438427 percent to the County, as required by *Section 49-605, Tennessee Code Annotated.* The result of the Opinion of the Supreme Court of Tennessee is to allow counties to appropriate Federal Revenue Sharing Funds into its school fund without the apportionment required of its own revenue which approximately doubles the value of Federal Revenue Sharing money placed in the school fund. It has the opposite and equal result of denying to city school systems that portion of county school funds which otherwise would have been payable through proper apportionment of the entire appropriation.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with and negates a direct mandate of the United States Congress limiting the use of Federal Revenue Sharing Funds by recipients. The issue is broader than the occurrences in this case alone. The broader issue is whether or not any recipient of Federal Revenue Sharing Funds can, by appropriating the funds in such a manner or for such a purpose as to make the funds subject to the directions of a state statute, effectively wipe away a requirement that such funds be used "only in accordance with the laws and procedures applicable to the expenditure of its own revenue", as required by *Title 31, Section 1243(4)1,*

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*(as evidenced by the amicus appearances of Tennessee Municipal League, and the cities of Athens, Chattanooga, Cleveland, Covington, Dyersburg, Elizabethtown, Etowah, Fayetteville, Friendship, Greeneville, Humboldt, Kingsport, Knoxville, Lenior (City School Board), Memphis, Morristown, Murfreesboro, Newport, Oak Ridge, Rogersville, Sweetwater, Tullahoma and Union City)

United States Code Annotated. This has occurred here if the Opinion of the Supreme Court of Tennessee is allowed to stand.

This is a classic case in that Madison County, Tennessee has appropriated both its own revenue and Federal Revenue Sharing Funds granted to the county into the one fund for the same purposes, that is, into the school fund of Madison County, Tennessee, for current operation and maintenance expense. This is done by virtue of the requirements of *Section 49-605, Tennessee Code Annotated. It is after this appropriation has been accomplished that the school fund is separated by the County Trustee into (1) funds raised locally and (2) into funds derived from Federal Revenue Sharing Grants for the purpose of determining the procedural application of the remaining portions of the statute.*

The remaining applicable portions of the state statute are purely procedural and ministerial, commanding the County Trustee ("shall") to apportion the school fund with city school systems under a formula set out in the statute. The County Trustee apportioned the County Revenue and refused to apportion that portion of the school fund derived from Federal Revenue Sharing funds. This was a deliberate act done in concert with other officials of Madison County, Tennessee for the express purpose of evading the apportionment required by Tennessee law.

A comparison of use between the unearmarked funds received by a Tennessee county from the second one-half of Tennessee state sales tax and funds derived from a Federal Revenue Sharing Grant will reflect that Madison County is not expending Federal Revenue Sharing Funds in "accordance with the laws and procedures under which it expends its own revenue."

Section 67-3052(2)(a), Tennessee Code Annotated, authorizes a county to allocate the second one-half of sales tax collected by the state and paid to the county to "such fund or funds of the county" as it shall direct.

The Supreme Court of Tennessee has very recently established the proper guidelines for the handling of unearmarked funds received by a Tennessee county. The case of *City of Harriman vs. Roane County, 553 S.W.2d 904, page 907C* (Appendix D) commands Roane County unequivocably to apportion its school fund with the City of Harriman School System under the provision of *Section 49-605, Tennessee Code Annotated*, including the second one-half of the state sales tax received by Roane County which is not earmarked for any particular purpose.

Both the second one-half sales tax and Federal Revenue Sharing Funds come to the county without limitation or direction except that contained in the Federal Revenue Sharing Law which is ited above. No county in Tennessee is compelled to appropriate either sales tax money or Federal Revenue Sharing money into its school fund. A county must elect to do so.

Once a county elects to appropriate its revenue, from whatever source, into its school fund in accordance with *Section 49-605, Tennessee Code Annotated*, it is the position of the petitioner that all distinction between these funds has been lost unless a direct violation is going to result by using Federal Revenue Sharing Funds in a different manner than the use to which other county revenue is applied. That is what is occurring in this case.

The County is required by *Title 31, Section 1243(4)1, United States Code Annotated*, to disburse Federal Rev-

enue Sharing Funds "*only in accordance with the laws and procedures applicable to the expenditure of its own revenue.*" If this can occur in this case, then the violations which can occur in other areas, as far as the use of Federal Revenue Sharing Funds is concerned, will only be limited by the imagination of the various state legislatures in all areas.

It is the position of the petitioner that the total funds appropriated into the school fund must follow the same law and procedure. The Opinion of the Tennessee Supreme Court holds that this is not so; that *local revenue must be apportioned* under the provisions of *Section 49-605, Tennessee Code Annotated*, with the special or city school districts within Madison County, Tennessee while *Federal Revenue Sharing Funds used for the identical purposes need not be so apportioned, for no other reason than the fact that these are Federal Revenue Sharing Funds.* In the opinion of the petitioner, this is in direct violation of the requirement of *Title 31, Section 1243(4)1, United States Code Annotated (Federal Revenue Sharing Law)*.

The Supreme Court of Tennessee in the prevailing Opinion addresses the above question, beginning on page 6 of such Opinion, and holds that there is no Federal question present; that the formulae for distribution of Federal Revenue Sharing Funds are not equitable and that local governments are free to spend Federal funds

> "according to their own perceived demands and objectives" . . . "they are Federal Sharing Funds, and their use must lie in the sound management and discretion of the County Government". (Page 13).

Finally, the Supreme Court's prevailing Opinion declares (on page 14).

> "Again, in the instant case we do not deal with conventional state or county revenues, but with funds that come to local governments with the restriction that they will be expended 'in accordance with the laws and procedures applicable to the expenditure of its own revenues'." *31 USC 1243(a)4.* "There is no Tennessee law that 'precludes the use of these funds for any legitimate county purpose'."

It is apparent that the prevailing Opinion missed the question entirely. It is true that there is no Tennessee law that precludes the use of these funds for any legitimate county purpose. It is, however, equally and predominantely true that there is a Federal Law restricting the manner in which Federal Revenue Funds may be used by a county.

The General Assembly of the State of Tennessee, in Chapter 9, "*Appropriation and Disbursement of Funds*," under the general provisions, "*Counties*", has specified in *Section 5-924 Tennessee Code Annotated* that Federal funds are county funds:

> "5-924. APPROPRIATION OF CERTAIN FUNDS TO USE OF VARIOUS DEPARTMENTS AND AGENCIES. - All funds whatever source derived, including but not limited to taxes, county aid funds, *federal funds*, and fines, which are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices, and agencies of county governments ***shall be appropriated to such use by the county legislative bodies.***" (Emphasis supplied.)

This statute clearly identifies and authorizes both local revenue and "federal funds" for county use as one and the same, the Federal Revenue Law requires only that both funds be used the same. In this case the funds were not used the same, resulting in a windfall profit to counties and a resulting equal loss to city school systems in Tennessee.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Supreme Court of the State of Tennessee.

Respectfully submitted,

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Counsel for Petitioners

OF COUNSEL

RICE & RICE

APPENDIX A

581 SOUTH WESTERN REPORTER, 2d SERIES

[632]

STATE of Tennessee, ex rel. Robert CONGER et al.

v.

MADISON COUNTY et al.

Supreme Court of Tennessee.

March 26, 1979.

Rehearing Denied May 29, 1979.

City commissioners brought action against county challenging failure of county to apportion the revenue sharing funds which it allocated to the school system to a special school district within the county.

[633]

The Law Court, Madison County, Gene Walker, J., granted relief and county appealed. The Court of Appeals reversed and certiorari was granted. The Supreme Court, Henry, C. J., held that: (1) federal revenue sharing funds may be used by the county for school purposes, and (2) federal revenue sharing funds allocated by the county to the schools need not be apportioned to the county schools, city schools, and special schools.

Affirmed.

Fones, J., filed an opinion concurring in the result in which Cooper, J., concurred.

Brock, J., filed a dissenting opinion.

1. United States 82(2)

Federal Revenue Sharing Act was designed to return to state and local communities revenue collected by the federal government for use according to their own perceived demands and objectives and not those of the federal government. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 102 et seq. as amended 31 U.S.C.A. § 1221 et seq.

2. United States 82(2)

Federal revenue sharing funds are not earmarked for any specific purpose and, upon their receipt by a county, they become subject to appropriation and use by the quarterly court. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 102 et seq. as amended 31 U.S.C.A. § 1221 et seq.

3. Schools 92(1)

Quarterly court had the authority to appropriate revenue sharing funds for use in the operation and maintenance of the school system. (Per Henry, Chief Justice, with one Justice concurring and two justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 102 et seq. as amended 31 U.S.C.A. § 1221 et seq.; T.C.A. § 49-605.

4. Counties 158

United States 82(2)

No Tennessee law precludes the use of federal revenue sharing funds by a county for any legitimate purpose. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 123(a)(4) as amended 31 U.S.C.A. § 1243(a)(4).

5. Schools 93

Statute requiring that school funds received from the state, county, and other political subdivisions must be apportioned by the county trustee among the county, city, and special school districts therein is not applicable to federal revenue sharing funds as the federal government is not a "political subdivision." (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 123(a)(4) as amended 31 U.S.C.A. § 1243(a)(4); T.C.A. § 49-605.

See publication Words and Phrases for other judicial constructions and definitions.

6. Schools 93

Portion of the county's share of federal revenue sharing funds which the county allocates to the school fund is not required to be apportioned among the special school districts in the county. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 123(a)(4) as amended 31 U.S.C.A. § 1243(a)(4); T.C.A. § 49-605.

Russell Rice, Rice & Rice, Sidney W. Spragins, Jackson, for petitioners.

Hewitt P. Tomlin, Jr., George R. Fusner, Jr., Waldrop, Hall, Tomlin & Farmer, Jackson, for respondent Madison County.

[634]

Jack Manhein, Jackson, for respondent Transamerica Ins. Co.

Thomas E. Fox, Franklin, for Williamson County, amicus curiae.

Edward G. Kelly, Jr., Cobb, Edwards, Hamlet, Nichol & Woodall, Memphis, for Bd. of Ed., Memphis City Schools, amicus curiae.

Charles E. Griffith, Robert C. Evans, Griffith & Stokes, Nashville, for Tennessee Municipal League, et al., amicus curiae.

Charles A. Maner, Jr., Dale C. Workman, Knoxville, for Knox County and Judge C. Howard Bozeman, amicus curiae.

OPINION

HENRY, Chief Justice.

The principal issue before the Court is whether Federal Revenue Sharing Funds allocated to a county and, by its Quarterly Court, transferred to the County School Fund, must be apportioned with a special school district within the county under § 49-605, T.C.A.[1] The Trial

1. The apportionment provision is now codified in § 49-614, T.C.A., which contains new acronyms, e. g., WFTEADA (weighted full-time

(Continued on next page)

Judge responded in the affirmative; the Court of Appeals in the negative; we agree with the Court of Appeals.

A preliminary issue, but one of pivotal importance, is whether such funds may be used by a county for school purposes.

We hold that they may.

I.

History of the Lawsuit

This action was instituted on August 24, 1977 in the Circuit Court at Jackson by the three Commissioners of the City of Jackson, who, by virtue of their office constitute the School Board of the City of Jackson, which maintains its own school system, operating wholly within the city.

Named as parties defendant were Madison County, the County Judge,[2] the County Trustee, and the surety on the Trustee's official bond.

The complaint alleges, and the trial judge found, that during the early part of 1977 the Quarterly Court of Madison County appropriated to the Madison County General Purpose School Fund, for maintenance and oper-

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[1](Continued)

equivalent average daily attendance), in place of ADA. Section 49-602, **et seq.** contains the statutory provisions relating to the State Foundation Program, and was derived from Chapter 289, Acts of 1977. References in this opinion are to § 49-605, T.C.A., as it appears in main Volume 9, T.C.A.

2. This action was instituted and all pertinent events occurred prior to the 1978 amendment to Article VII, Sec. 1 of the Constitution of Tennessee, which, **inter alia**, created the office of County Executive. This amendment was adopted in convention on December 6, 1977, approved by the people on March 7, 1978, and proclaimed by the Governor on March 31, 1978.

ating purposes, the sum of $201,476.00 from Federal Revenue Sharing Funds, and that this sum was not apportioned with the City of Jackson.

It is further averred and established by the proof that the Quarterly Court, in its budget for the fiscal year ending in 1978, appropriated from Federal Revenue Sharing Funds to the Madison County School System the sum of $565,822.51, accompanied by a stated intention that those funds would not be apportioned in accordance with the City's view of the mandate of § 49-605, T.C.A. These funds also were appropriated for maintenance and operation.

The trial court held that apportionment was required under § 49-605, T.C.A., and should have been accomplished by using the average daily attendance (ADA) computations. The ADA ratio between the two systems indicated that the City of Jackson's share was 48.561537% and that of Madison County, 51.438427%.

From these figures, the Trial Judge found that it would have required a total

[635]

appropriation of $391,683.82 to validate the appropriation to the Madison County System. This would have resulted in an apportionment of $190,207.82 to the City of Jackson. Therefore, he awarded judgment against Madison County in this amount.

He further found that the County Trustee had knowingly failed to apportion the $565,822.51 appropriated for fiscal

year 1978 and that the "Defendants in this case openly state that they do not intend to make such apportionment as required by [section 49-605] . . . ." In this connection he held that "the determination not to apportion in both instances was made by the Madison County Quarterly Court and such decision was communicated by the County Judge to the County Trustee."

Responding to the prayer for a declaratory judgment, the Trial Judge held:

> that all funds, including funds derived from Federal Revenue Sharing Grants, lawfully appropriated by the Madison County Quarterly Court for the current operation and maintenance of county schools must be placed in one separate school fund and apportioned between [the two systems] in accordance with the provisions of Section 49-605 Tennessee Code Annotated.

He "strictly and permanently enjoined" the Madison County Quarterly Court, the County Judge and the County Trustee to make such apportionments "now and hereafter."

To insure the collection of the judgment against Madison County, he ordered the county to levy a tax on all real estate in the county or to provide for payment by 31 December 1978.

The Surety on the Trustee's official bond was dismissed.

To enforce his decree writs of mandamus, injunction, and execution were awarded.

To summarize, the Trial Judge held that § 49-605, T.C.A. required that Federal Revenue Sharing Funds

appropriated for current operation and maintenance of county schools must be apportioned, and ordered the Quarterly County Court, the County Judge, and the County Trustee to make the apportionment now and hereafter. He gave judgment against the county and awarded appropriate extraordinary process.

The record fully supports all factual findings and we concur in them.

The Court of Appeals, in a brief opinion, held that § 49-605, T.C.A. "has no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended."

We examine these divergent legal conclusions.

II.

Federal Revenue Sharing Act[3]

We think an orderly consideration of this action must start with the Federal Revenue Sharing Act.

[1] This act was designed to return to state and local communities revenue collected by the federal government for use "according to their own perceived demands and objectives and not those of the federal government." *Carolina Action v. Simon*, 389 F. Supp. 1244, 1248 (M.D.N.C. 1975).

It should be noted at the outset that, in its original form, the act restricted the use of these federal funds to "priority expenditures." Education was not an enu-

3. The correct title of this law is the "State and Local Fiscal Assistance Act of 1972." We elect to use the popular name.

merated permitted use. *See* 31 U.S.C. § 1222. This section was repealed by Pub. L. 94-488, § 3(a), 90 Stat. 2341, October 3, 1976.

The statutory scheme of distribution is somewhat cumbersome and tends to be confusing. It is not required that we deal with it in detail. The allocation among states is determined by 31 U.S.C. § 1225.

[636]

The amount allocated to each state is divided one-third to the state government and two-thirds to local governments, 31 U.S.C. § 1226, on the basis of a formula derived from the Act. The two-thirds allocated to local governments is distributed on the basis of a formula reflected in 31 U.S.C. § 1227. Generally speaking, the local government share is allocated to county areas on the basis of the ratio that the population of the county, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor, bears to the sum of that figure for all county areas in the state. 31 U.S.C. § 1227(a).

The county area share is divided between the county and all municipalities of the county. The allocation to a county government is on the basis of the ratio the adjusted taxes of the county government bears to the adjusted taxes of the county government and all other units of local government located in the county area. 31 U.S.C. § 1227(b)(1).

The remaining funds are then allocated among the municipalities (in Tennessee) located in the county area.

31 U.S.C. § 1227(b)(2). As a result, the municipalities within a county area *collectively* receive their allocations in the same manner as do counties. The allocation *among* the municipalities is based upon a formula taking into consideration population, general tax effort, and relative income. 31 U.S.C. § 1227(b)(2).

Attached hereto as an Appendix is a flow chart designed to show generally the distribution of these funds. It is included solely to clarify this opinion, and should only be used for that purpose. The details of the various formulae and other factors not shown in this appendix are set forth in Chapter 24, Title 31, U.S.C.

As will be seen by this narration and by reference to the appendix, the City of Jackson has already received an allocation of Federal Sharing Funds, wholly separate and apart from those received by Madison County. The entitlement of all government units is determined by computer and the distributions are made directly to the local governments from the Federal Sharing Office in Washington, D. C. May the City of Jackson receive a portion of the funds allocated to the county?

Federal statutes alone do not provide the answer. In order to qualify for the federal funds, a county or municipality . . . must establish . . . to the satisfaction of the Secretary that—

* * *

(4) It will provide for the expenditure of amounts received under subchapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues. 31 U.S.C. § 1243(a)(4).

Thus, the answer to the question presented in this action lies in the statutes of the State of Tennessee.

III.

Source, Use, and Nature of County Funds

[2] Federal Revenue Sharing Funds are not earmarked for any specific purpose. Upon their receipt by a county, they become subject to appropriation and use by the Quarterly Court.

In attempting to clarify the nature and permissible use of these funds, our statutory law is not particularly helpful. For instance, § 5-801, T.C.A., undertakes to inventory all sources of county revenue. It reads:

> County revenue is derived from taxes on polls, property, privileges, litigation, merchants, peddlers; from strays, fines and forfeitures, as below [See Section 5-802 through 5-805], and from money remaining unclaimed more than two (2) years in clerk's offices.

[637]

It is obvious that this statute is hopelessly out of date and that Federal Revenue Sharing Funds, now a major source of county revenue, do not fit into any of the listed classifications.

There is, however, another statute, not cited by the principal parties, but relied upon by the Surety on the Trustee's bond, which we consider to be highly significant. Section 5-924, T.C.A. reads as follows:

> All funds from whatever source derived, including but not limited to taxes, county aid funds, *federal funds*, and fines, which are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices, and agencies of county governments shall be appropriated to such use by the county legislative bodies. (Emphasis supplied)

It should be noted that this statute, as originally enacted in 1959 did not include federal funds. By Chapter 615 of the Public Acts of 1976 the original language was changed by adding the words "federal funds." No other change was made. Section 49-605, however, was not amended.

[3] It would seem clear that the Quarterly Court of Madison County had the authority, under this statute, to appropriate Federal Revenue Sharing Funds to use in the operation and maintenance of the school system. Indeed, independent of this statutory authorization, it would seem that the Quarterly Court had the authority to place these revenues in any of the County's funds, including the school fund.

There is, however, a line of cases that at least superficially tends to indicate a contrary result.

In *State ex rel. Davidson County Board of Education v. Pollard*, 124 Tenn. 127, 136 S.W. 427 (1910), the question presented to the Court was whether a county court had the authority to make an appropriation out of the general fund of a county for school purposes. Responding in the negative, the Court held that

> county purposes are of two-kinds, general county purposes and special county purposes, and that

> .moneys raised by taxation for special county purposes cannot be used for a general county purpose, and that money raised for general county purposes cannot be used for a special county purpose. 124 Tenn. at 130-31, 136 S.W. at 428.

The Court quoted with approval the following language from *Kennedy v. Montgomery County*, 98 Tenn. 165, 179, 38 S.W. 1075, 1079 (1897):

> The taxpayers of every county have a right to know for what purpose they are being taxed, and also to know that taxes collected from them for any special purpose are applied to such purpose, and not to some other, at the discretion of county officials, and according to their ideas of public policy or expediency. *The law does not provide for the mixing of special and ordinary funds, nor the supplementing of one by the other by county officials.* (Emphasis in original) 124 Tenn. at 135, 136 S.W. at 429

The *Pollard-Kennedy* rationale was followed in *Board of Commissioners of Union City v. Obion County*, 188 Tenn. 666, 222 S.W.2d 7 (1949). In that case it appeared that the county had paid a bonus to teachers in the county schools, and had funded it by a transfer from the "General Fund" to the "School Fund." Pointing out that the general fund "had been levied and collected for specific county purposes," the Court held that "[t]he mere fact that . . . the money was passed through the elementary school fund prior to its disbursement . . . did not change the nature of the money or make it legally a part of the elementary school fund." Therefore, the Court held it "remained a part of the County's 'General Fund'" and could not be diverted. 188 Tenn. at 670, 222 S.W.2d at 8.

An equally strong case is *State ex rel. Baird v. Wilson County*, 212 Tenn. 619, 371 S.W.2d 434 (1963). In that case the County Quarterly Court had diverted money from the county general fund for elementary school purposes. Relying upon *Obion County, supra* and *State, ex rel. Cope v. Davidson County*, 198 Tenn. 24, 277 S.W.2d 396 (1955), (fund derived from special tax for teacher transportation was in reality a means for increasing salaries without making a devise with the City of Nashville) the Court said:

> Both the *Obion County* case and the *Davidson County* case clearly state that funds derived from taxes levied for one purpose, when transferred by the Quarterly County Court to the school fund, do not become a part of the funds to which transferred. The unauthorized and *ultra vires* resolution of the County Court diverting funds from the legitimate purpose for which the tax to produce such funds had been levied does not change the nature of the fund or make it legally a part of the fund to which it is thus wrongfully transferred. 212 Tenn. at 626, 371 S.W.2d 438.

If we hold these cases to be applicable, it would logically follow that Federal Revenue Sharing Funds may not be used for the maintenance and operation of public schools in the county, and that such a use would be an unauthorized diversion. Pursuant to such a holding the county would have to transfer the funds to the County General Fund and there could be no apportionment.

Such a holding would frustrate the purpose of the act, which is to permit local governments to "spend these funds according to their own perceived demands and objectives." Further, it would be contrary to § 5-924, T.C.A. which provides, *inter alia*, that "[a]ll . . . federal funds . . which are to be used [for various county purposes] shall be appropriated to such use by the county legislative bodies."

Finally, such a holding would contradict common sense and, in effect, make these funds unusable for any purpose. It must be borne in mind that these are not conventional county revenues raised by conventional tax levies. They are Federal Sharing Funds, and their use must lie in the sound judgment and discretion of the county government.

The cases noted above involve the unauthorized diversion of conventional tax revenues raised for specific and itemized purposes. Therefore our courts consistently and correctly have held that tax revenues raised for stated public purposes may not be diverted. Federal Revenue Sharing Funds, however, are not derived from county tax levies and collected for designated purposes.

We, therefore, hold that Federal Revenue Sharing Funds may be allocated for school purposes.

Nothing in our recent case of *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977) alters this conclusion. In that case we were dealing with conventional county revenues, expenditure of which is governed by state statutory and decisional law. We held that the proceeds of the wholesale beer tax could not lawfully be appropriated to school purposes "without specific statutory authoriza-

tion," 553 S.W.2d at 907, and that although the second half of the retail sales tax proceeds could be so used, they must be apportioned in accordance with § 49-605, T.C.A.

[4] Again, in the instant case we do not deal with conventioned state or ɔunty revenues, but with funds that come to local governments with the restriction that they will be expended "in accordance with the laws and procedures applicable to the expenditure of its own revenues." 31 U.S.C. § 1243(a)(4). There is no Tennessee law that precludes the use of these funds for any legitimate county purpose.

IV.

Apportionment

The remaining question is whether these funds must be apportioned with the City of Jackson. We respond in the negative.

[639]

Section 49-605, T.C.A. provides, in pertinent part as follows:

> For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes ***received from the state, county, and other political***

> *subdivisions, if any,* . . . All school funds for current operation and maintenance purposes collected by any county, [except for transportation tax levy funds] shall be *apportioned* by the county trustee *among the county, city and special school districts therein* on the basis of the average daily attendance maintained by each, during the current school year. (Emphasis supplied)

[5] By its very phraseology, this statute cannot be applicable to Federal Revenue Sharing Funds, the source of which is the Federal Government. Money received from the Federal Government obviously is not received from a state, county, or other political *subdivision*. The political facts of life are that the Federal Government is in no sense a "political subdivision."

The apportionment provision for "[a]ll school funds for current operation and maintenance purposes collected by any county" simply refers to all funds collected or received from the state, county, or other political subdivision. It adds nothing to the scope and extent of the definition of the funds embraced within the statute.

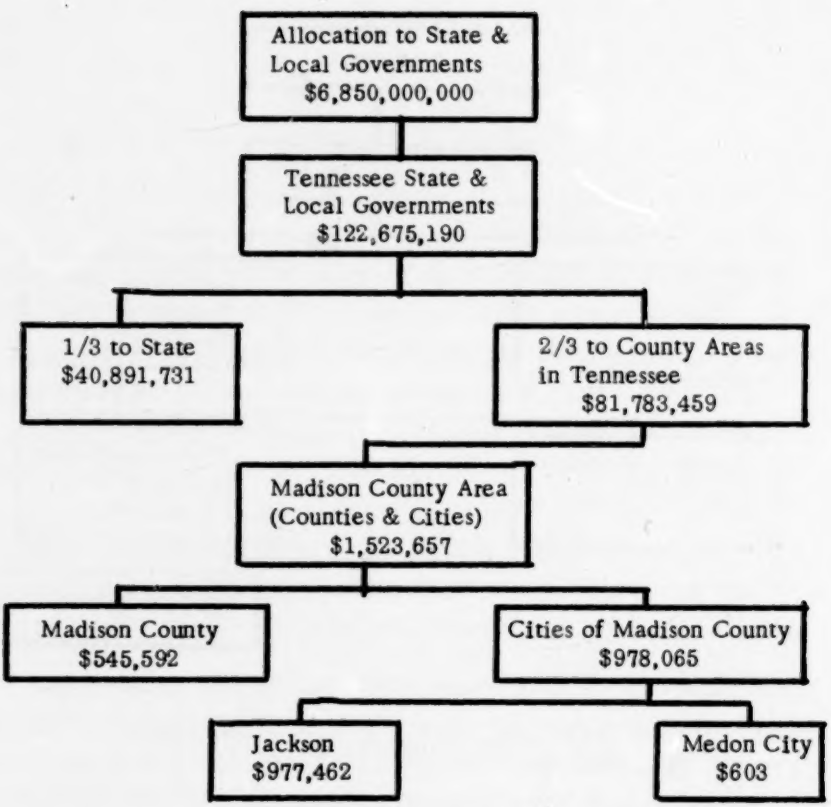
Section 49-605, T.C.A. embraces all funds received from the state, raised by local taxation, or derived from appropriate bond issues. It is inapplicable to Federal Revenue Sharing Funds, which may or may not be used for school purposes.

[6] We, therefore, hold that a county's share of Federal Revenue Sharing Funds, allocated to the County School Fund, is not subject to the provisions of § 49-605, T.C.A. and, therefore need not be apportioned among the special school districts of a county.

This result not only is dictated by the language of the statute, but is commanded by considerations of equity and fundamental fairness. Under the formula heretofore discussed, the City of Jackson has already received its fair share of Federal Revenue Sharing Funds. This suit represents an effort to encroach upon the County's share. If we were to hold in the City's favor, the County would have to pay the City the sum of $190,207.82 as a result of having appropriated $201,476.00 to the School Fund, leaving a net gain of $11,268.18. This would be unconscionable.

There appears in this record a chart which we think validates the equitable conclusions we reach. This chart is based upon the ninth entitlement period covering the period from 1 October 1977 through 30 September 1978. It shows the result of the application of the various pertinent formulae.

[See following illustration.]



The pie has already been sliced; we are not willing to slice it again.

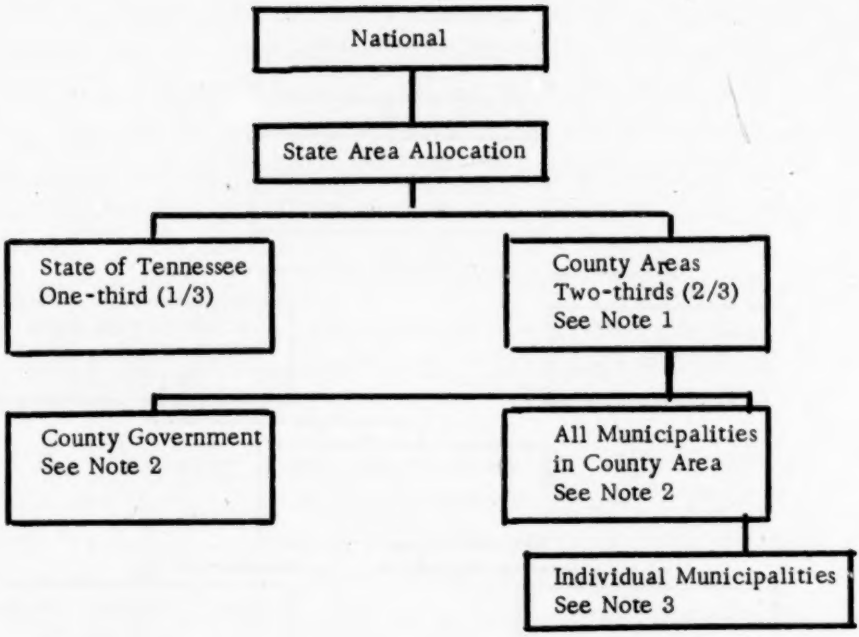
Section 49-605, T.C.A. came into existence long before Revenue Sharing came upon the scene. If the conclusions we reach are not in the public interest, the General Assembly should be requested to scrutinize § 49-605, T.C.A. in the light of the distribution of federal funds to the local governments of Tennessee.

Affirmed.

FONES, J., concurs with opinion.

COOPER and HARBISON, JJ., concur.

BROCK, J., dissents with opinion.



Notes on Distribution to Local Governments

1. **First** allocation is to county areas on basis of population multiplied by general tax effort multiplied by relative per capita income. This fixes the ratio each of the 95 county areas bears to all 95 such areas.

2. **Second** allocation is to county government and all municipalities in the county on the basis of adjusted taxes.

3. **Third** allocation is among the various municipalities on the basis of population x tax effort x relative per capita income.

FONES, Justice, concurring in result.

The Chief Justice has written an excellent opinion, exploring every avenue that might lead the Court to the correct judicial resolution of this dispute between the City of Jackson and the County of Madison. But the intractable problem presented must, in the final analysis, be answered by an interpretation of T.C.A. § 49-605. The difficulty in finding the correct judicial solution of the problem in that section lies in the fact that there is no express language in the statute that dictates either result, and an attempt to ascertain legislative intent is, in my opinion, inappropriate because the section was enacted prior to the existence of federal revenue sharing.

My brother Brock has written an excellent, well reasoned opinion, but I do not share his conviction that *City of Harriman v. Roane Co., supra*, and *Board of Education v. Shelby Co., infra*, control the disposition of this case. Like the dissent, I do not concur in predicating the decision, in whole or in part, on equitable considerations. This record is inadequate to enable me to pass judgment on the equities. In my opinion, the equities of slicing the federal revenue sharing pie are appropriate for the legislative halls only.

I concur in the result reached by the majority only because T.C.A. § 49-605 can be read to say that the expression "all school funds" is modified by the phrase "received from the state, county and other political subdivisions", and therefore carries no mandate that federal revenue sharing funds be apportioned.

COOPER, J., concurs.

BROCK, Justice, dissenting.

I, respectfully dissent. In my view, the majority has given an erroneous construction to T.C.A., § 49-605, subsection A, which provides:

> "All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year." [1]

The language employed by the Legislature is all inclusive. It purports to control "[*a*]*ll* school funds for current operation and maintenance purposes" and requires that they be apportioned by the trustee of the county among all school systems in the county whether operated by the county, city or other special school district. The only exception authorized is such funds as result from a local special pupil transportation levy. It is clear to me that the Legislative intent is evident and that the quoted provision requires apportionment of county school funds which are appropriated for current operation and maintenance purposes, regardless of the sources of such funds; so that, Federal revenue sharing funds which are allocated for such school purposes must be apportioned under this provision..

1. This mandate is re-stated in paragraph "5" of subsection A.

Our recent decision in *City of Harriman v. Roane County*, Tenn., 553 S.W.2d 904 (1977) supports this view. Speaking for a unanimous Court, Mr. Justice Harbison, after noting that funds raised by a county from a special tax levy for the purpose of "the building, repair and equipment of county schools" were not required by the above quoted statute to be apportional with other school systems in the county, further stated:

> "Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as has been done here with the portion of sales tax at issue, then those funds become subject to the apportionment provisions of the general school statutes." 553 S.W.2d at 909.

In the course of that opinion, we also quoted with approval from *Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 569 (1960) as follows:

[643]

> "In that case a private act purporting to authorize a different distribution of funds between the city and county school systems from that provided in what is now T.C.A. § 49-605 was held unconstitutional and potentially disruptive of the uniform system contemplated by the general statutes.
>
> "In that case, the Court said:
>
> > 'The general purpose and plan of the Education Acts passed by the Legislature of Tennessee,

beginning with the Act of 1925, referred to hereinabove, was to establish and maintain a *uniform system* of public education in this State, public education being primarily a State function. The philosophy permeating such general uniform plan, as set out in said General Education Acts, in so far as pertinent to the issues in these causes, provides for a division of all county school funds, with the exception of funds for the transportation of pupils attending the public schools, between the County School System and the School systems operated by municipalities or special school districts, such as the City of Memphis and its Board of Education, within the county, on a proportional basis of the average daily attendance of pupils attending the various schools in a county.' 207 Tenn. at 345, 339 S.W.2d at 576.

"Further, the Court said:

'Education of the youth of each county is the primary purpose of our State Educational System as reflected throughout all of its General Education Acts, and the apportionment of local school funds under the general law on the basis of average daily attendance of pupils in the various schools gives to every school system its proportional and fair share of said funds, so, in a sense, each pupil may be afforded the same opportunity to obtain an edcuation, regardless of place of residence.' 207 Tenn. at 351, 339 S.W.2d at 578." 553 S.W.2d at 908.

This Court stated further in the *City of Harriman* case:

"The provisions of T.C.A. §49-605 are mandatory. They require that all school funds for current operations and maintenance purposes collected by a county, except those used for pupil transportation, 'shall be apportioned by the county trustee, among the county, city, and special school districts therein on the basis of average daily attendance maintained by each, during the current school year.'" 553 S.W.2d at 908.

It appears clear to me that the majority in the case at bar have departed from the liberal and very sound construction of T.C.A., §49-605, laid down 19 years ago in *Board of Education of the Memphis City Schools v. Shelby County*, *supra*, and again only 18 months ago in *City of Harriman v. Roane County*, *supra*. In holding that the apportionment mandate of T.C.A., §49-605, does not apply to "Federal revenue sharing funds" although those funds are appropriated by the county for current operation and maintenance school purposes, the majority has engrafted into the statute an additional exception which should read as follows:

". . . and except for such funds as a county may receive from the Federal government as revenue sharing funds."

Certainly the language of the statute does not require such an exception. Moreover, I think it clear that the judicially added exception of Federal revenue sharing funds is contrary to the manifest legislative intent, i. e., that the education of every school child in a given county of this state shall be supported by an equal number of dollars without regard to whether the child is a student of the county school system, the city school system or

the system of some other special school district within the county and also without regard to the source of such school funds. The majority permits Madison County to appropriate huge sums of money for the education of children of the Madison County school system without apportioning those funds with the City of Jackson school system, merely because the source of those funds was a Federal "revenue sharing" grant.

[644]

The result thus reached by the majority is not required by the applicable Federal law, for, as pointed out in the majority opinion, the Federal act merely provides that Federal revenue sharing funds shall be expended ". . . in accordance with the laws and procedures applicable to the expenditure of its (county's) own revenues." 31 U.S.C., § 1243(a)(4). "Its (Madison County's) own revenues," once appropriated for current operation and maintenance purposes, as was done by the Madison County court in this case, are required by T.C.A., § 49-605, to be apportioned on the basis of average daily attendance with the City of Jackson school system. As we held in *City of Harriman*, *supra*, once the county ". . . lawfully appropriates funds to current school operations, . . . then those funds become subject to the apportionment provisions of the general school statute." 553 S.W.2d at 909.

The majority notes that to hold that T.C.A., § 49-605, requires the apportionment of Federal revenue sharing funds with other school districts within a county does not comport with its notions of "considerations of equity and fundamental fairness." Referring to the fact that the

city also receives Federal revenue sharing funds from the Federal government, the majority notes that "[t]he pie has already been sliced; we are not willing to slice it again." However, it should be noted that the "pie" was not doled out by the Federal government to the school system of Madison County or the school system of the City of Jackson; it was doled out to the county of Madison and the City of Jackson each of which was free to expend funds for purposes other than the current operation and maintenance of its school system. Once the county appropriated those funds for the current operation and maintenance of its county school system, however, they became subject to the apportionment required by T.C.A., §49-605.

I would reverse the judgment of the Court of Appeals and affirm that of the trial court.

OPINION ON PETITION TO REHEAR

HENRY, Chief Judge.

The petition to rehear is respectfully denied.

Much of the petition takes two members of the Court to task for allegedly applying a "balancing of the equities" test. The opinion shows facially that equitable considerations formed no part of the Court's construction of the statute. After construing Section 49-605, T.C.A., and holding that it was inapplicable to Federal Revenue Sharing Funds, we said:

> This result not only is dictated by the language of the statute, but is commanded by consideration of equity and fundamental fairness.

Thus, it is evident that the matter of "balancing equities" formed no part of the statutory construction consideration. Moreover, three members of this Court expressly disapproved these considerations, thus rendering this portion of the opinion dicta and ineffective.

This Court is acutely aware of the financial considerations involved and is not unsympathetic to the problems of the City of Jackson. The City's prayer for relief must be addressed to the General Assembly. We have construed the appropriate statutes and are satisfied with the conclusions we have reached.

All members of the Court continue to adhere to their previously expressed views.

FONES, COOPER, BROCK and HARBISON, JJ., concur.

APPENDIX B

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

STATE OF TENNESSEE, EX REL. ROBERT CONGER, ET AL.,	:	
PLAINTIFFS-APPELLEES,	:	Madison Law
VS.	:	
MADISON COUNTY, TENNESSEE, ET AL.	:	Honorable Gene Walker, Judge
DEFENDANTS-APPELLANTS.	:	

(Filed June 2, 1978)

Hewitt P. Tomlin, Jr. of Jackson for the appellants, George R. Fusner, Jr., Waldrop, Hall, Tomlin & Farmer of counsel.

Rice & Rice of Jackson for the appellees.

Jack Manhein, Jr. for Transamerica Insurance Company.

Amicus curiae brief of Loudon County, Bland D. Winfrey, Arnold, Winfrey & Simpson of Lenoir City.

Amicus curiae brief of Williamson County, Thomas E. Fox.

Amicus curiae brief of Knox County and C. Howard Bozeman, County Judge, Charles A. Maner, Jr. and Dale C. Workman of Knoxville.

Amicus curiae brief of Shelby County, Leo Bearman, Jr. of Memphis.

Amicus curiae brief of Blount County and its County Judge, Clyde McMahan, Jerry Cunningham and William B. Felknor.

Amicus curiae brief of Tennessee Municipal League, Charles E. Griffith, III and Robert C. Evans of Nashville.

REVERSED AND DISMISSED

Opinion filed: Jun 2, 1978

Madison County has placed in its educational budget some revenue sharing funds it received from the federal government. The only issue before the Court is whether Madison County must apportion that money with the City of Jackson on the basis of the average daily attendance of pupils in their respective school systems. Our answer is no.

The statute requiring Madison County to apportion money al-

[2]

located to school purposes is T.C.A. §49-605 which provides in pertinent part as follows:

> "49-605. Levying of School Tax—Funds—Expenditure—Fiscal Accounting—A.. For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school

operation purposes received from the *state*, *county*, *and other political subdivisions*, if any. (Emphasis supplied) . . . All school funds for current operation and maintenance purposes *collected* (Emphasis supplied) by any county, . . . , shall be apportioned by the county trustee among the county, city and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year . . ."

We hold that T.C.A. §49-605 has no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended.

It results that the judgment of the trial court is reversed and this lawsuit is dismissed. All injunctions and other extraordinary writs are hereby dissolved.

The costs in the trial court and in this Court are adjudged against the City of Jackson.

PER CURIAM

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT
JACKSON

May 29, 1979
FOR PUBLICATION

STATE OF TENNESSEE, EX REL. ROBERT CONGER, ET AL PETITIONERS	)	
VS.	)	CERTIORARI TO COURT OF APPEALS
MADISON COUNTY, ET AL RESPONDENTS	)	

OPINION ON PETITION TO REHEAR

(Filed May 29, 1979)

The petition to rehear is respectfully denied.

Much of the petition takes two members of the Court to task for allegedly applying a "balancing of the equities" test. The opinion shows facially that equitable considerations formed no part of the Court's construction of the statute. After construing Section 49-605, T.C.A., and holding that it was inapplicable to Federal Revenue Sharing Funds, we said:

> This result not only is dictated by the language of the statute, but is commanded by considerations of equity and fundamental fairness.

Thus, it is evident that the matter of "balancing equities" formed no part of the statutory construction consideration.

[2]

Moreover, three members of this Court expressly disapproved these considerations, thus rendering this portion of the opinion dicta and ineffective.

This Court is acutely aware of the financial considerations involved and is not unsympathetic to the problems of the City of Jackson. The City's prayer for relief must be addressed to the General Assembly. We have construed the appropriate statutes and are satisfied with the conclusions we have reached.

All members of the Court continue to adhere to their previously expressed views.

/s/ Henry
HENRY, C.J.

Concurrences in this Memorandum
Fones, J.
Copper, J.
Brock, J.
Harbison, J.

APPENDIX D

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553 SOUTH WESTERN REPORTER, 2d SERIES

CITY OF HARRIMAN et al., Petitioners,

v.

ROANE COUNTY, Tennessee, et al., Respondents.

Supreme Court of Tennessee.

July 25, 1977.

Action was brought seeking, inter alia, declaratory judgment with respect to distribution of public funds by county to separate city school system. The Equity Court, Roane County, James O. Phillips, Jr., Chancellor, entered decree denying claims of city school system and the city system appealed. The Court of Appeals affirmed and certiorari was granted. The Supreme Court, Harbison, J., held that: (1) separate city school system was not entitled to share in amount raised by county for interest and debt service from separate countywide tax for retirement of school bonds assumed by county; (2) it was improper to appropriate proceeds of wholesale beer tax for school purposes; (3) city school system was entitled merely to injunctive relief against future allocation, and (4) city school system was entitled to share in remaining half of retail sale tax proceeds of county.

Affirmed in part, reversed in part, and remanded.

1. Schools and School Districts 97(5)

City operating separate school system within county was not entitled to share in funds collected by county to pay interest and retire school bonds assumed by county after it took over a previous separate school system of another city, where funds used to retire those assumed school bonds were not derived from county school tax or any funds allotted to annual county school budgets and were apparently being collected under a separate county-wide tax. T.C.A. §§ 49-605, 49-711.

2. Injunction 189

Intoxicating Liquors 95

Quarterly county court was not authorized to apply proceeds of the wholesale beer tax to regular county school fund without making any division within the separate city school system in county, but since action taken was unauthorized the city was not entitled to share in the illegally appropriated funds and its only relief was a permanent injunction restraining such improper allocation by county in future. T.C.A. § 49-605.

3. Schools and School Districts 17.19(6)

County courts may not take money raised for school purposes and appropriate them for different purposes or obtain monies raised for purposes other than school purposes and use them for school purposes.

4. Intoxicating Liquors 95

County could not lawfully appropriate proceeds of wholesale beer tax to school purposes. T.C.A. § 57-301.

5. Schools and School Districts 19(3)

Where county, in accordance with statute, did divide with city school system on average daily attendance basis one half of its sales tax proceeds, with respect to the remainder county was required to share with city school system. T.C.A. §§ 49-605, 67-3052(1), (2)(a).

6. Schools and School Districts 11

Public education is essentially a state rather than a county or municipal function, and the general education statutes contemplate a uniform statewide system of public education. T.C.A. §§ 49-605, 67-3052(1), (2)(a).

7. Schools and School Districts 19(1)

Where county does not make a special purpose levy but lawfully appropriates funds to current school operations, those funds become subject to apportionment pro-

[905]

visions of general school statutes. T.C.A. § 49-605.

William A. Newcomb, Harriman, for petitioners.

Joe H. Walker, Harriman, for respondents.

OPINION

HARBISON, Justice.

This action was instituted by the City of Harriman, its Board of School Directors and some taxpayers, seeking a

declaratory judgment and incidental relief against Roane County and certain of its officials in connection with the distribution of public funds. Also involved was the interpretation of a contract executed between officials of the respective city and county school systems.

The case was tried on oral testimony. The Chancellor resolved the contract issues favorably to the contentions of the plaintiffs, petitioners here, holding the contract to have been cancelled. He also awarded the city schools a proportionate share, based upon average daily attendance, of certain payments received by the county in lieu of property taxes. No appeal has been taken as to either of these aspects of the case.

The Chancellor held that the city school system was not entitled to a division of payments being made by the county representing interest on certain school bonds assumed by the county. He also held that the city system was not entitled to share in proceeds derived from a wholesale beer tax, which proceeds were being allocated by the Quarterly County Court to the annual budget of the county schools. He further concluded that the city could not share in certain county sales tax receipts which were also being allocated to the regular county school budget.

The Court of Appeals affirmed the Chancellor in denying the claims of the city school system to any of these funds. We granted certiorari to give further consideration to the issues.

A. *Interest on School Bonds Assumed by the County*

Both the pleadings and the testimony in regard to this issue are brief. Prior to 1973 the City of Rockwood

operated a separate school system within Roane County. In that year the county purchased the schools and related equipment from the City of Rockwood. It assumed responsibility for the payment of school bonds which had been issued by the city. There is testimony that the county makes semi-annual payments to the city out of the county "debt service fund" so that the city may retire these bonds and pay the interest thereon. This debt service fund is created by a special property tax levied by the county.

According to the pleadings and statement of counsel, the county has either paid or is paying to the City of Harriman a proportionate amount of the principal of these school bonds, although it denies any legal obligation to do so.[1] The petitioners contend, however, that the city is also entitled to receive from the county additional amounts representing the interest and debt service on the bonds.

No authority has been cited by the petitioners in support of this proposition. They basically contend that the city is entitled to an apportionment pursuant to T. C. A. § 49-605, which directs apportionment of all school funds "for current operation and maintenance purposes collected by any county . . . ."

[1] It affirmatively appears from the record that the funds used to retire the Rockwood school bonds are not derived from the county school tax or any other

1. But see T. C. A. § 49-711.

funds allotted to the annual county school budgets. Apparently the bonds are being retired under a separate county-wide tax, and both interest and principal are being paid out of that levy. It is not shown that the funds used for retirement of these bonds are "for current operation and maintenance purposes", and we affirm the holding of the courts below that the city is not entitled to a division of the amounts representing interest payments and debt service. The assignments of error pertaining to this issue are overruled.

B. *The Wholesale Beer Tax*

It is the basic insistence of petitioners that the Quarterly County Court is not authorized by law to apply the proceeds of the wholesale beer tax to the regular county school fund, and that such action on its part is illegal. Neither court below appeared to consider this contention. Without citation of authority, both of them held that the Quarterly County Court could, in its discretion, so allocate these tax proceeds without making any division with the separate city school system.

[2] We are of the opinion that the position of the petitioners is correct, under well-settled authorities in this state, and that the action of the Quarterly County Court is improper. Under the same authorities, since the action taken is unauthorized, the petitioners are not entitled to share in these illegally appropriated funds, and the only relief which can be given is a permanent injunction, restraining such allocation in the future.

T. C. A. §49-605 provides as follows:

> "A. For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes received from the state, county, and other political subdivisions, if any. . . . All school funds for current operation and maintenance purposes collected by any county, [with an exception not here pertinent] shall be apportioned by the county trustee among the county, city and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year."

There is no question in the present case but that Roane County does levy a property tax for school purposes, and that the amount of this tax is being shared, on an average daily attendance basis, with the school system of the City of Harriman.

The petitioners alleged, however, and for all practical purposes the respondents admitted, that the Quarterly County Court is supplementing the funds used for the operation of county schools with proceeds from the wholesale beer tax and a part of the retail sales tax, for the express and deliberate purpose of keeping the school tax levy as low as possible. Since these special tax receipts are not divided with the city schools, taxpayers and school children residing in the city have been discriminated against, contrary to the provisions of the general education statute set out above.

[3] In the leading case of *State ex rel. Davidson County Board of Education v. Pollard*, 124 Tenn. 127, 136 S.W. 427 (1911), it was expressly held:

". . . [I]t is beyond the power of county courts of this State to take moneys raised for school purposes and appropriate them for other different purposes, or to take moneys raised for purposes other than school purposes and use them for school purposes." 124 Tenn. at 136, 136 S.W. at 429.

The Court further stated:

"This holding does not mean that that portion of the population of the counties of the State interested especially in the public schools and public school buildings are without remedy. All the law requires

[907]

is that each fund be kept separate and used for the purpose for which it was collected. The law is simple in its provisions for the raising of funds to run the schools, and all that is required in that regard is that the particular means provided by statutes be pursued. The slipshod method of using just any fund that might be on hand and available for just any purpose that might arise is not authorized by law and cannot be sanctioned by the courts." *Ibid.*.

This holding has been followed in many later cases. In *Maury County v. Whitthorne*, 174 Tenn. 384, 126 S.W.2d 304 (1939), the Court held that a Quarterly County

Court has no authority to appropriate general funds for any purposes other than those enumerated in what is now T.C.A. § 5-901 or in some other special statute.

In the case of *Board of Commissioners v. Obion County*, 188 Tenn. 666, 222 S.W.2d 7 (1949), a county had paid a bonus to its county school teachers out of general county funds. Officials of a separate city school system brought suit to obtain an equal amount for city teachers, contending that once general funds had been transferred into the school fund, the city school system was entitled to share on an average daily attendance basis. This Court held that the appropriation made by the Quarterly County Court to the county school teachers was not authorized by statute, and that the illegal nature of the appropriation was not changed by passing the funds into a school account. The Court said:

> "The fact that the county court made an unauthorized gift of county funds to the county school teachers, can be no basis for complainants to demand that a court of equity decree a further unauthorized raid on the county treasury for their benefit." 188 Tenn. at 670-671, 222 S.W.2d at 9.

To the same effect is the case of *State ex rel. Baird v. Wilson County*, 212 Tenn. 619, 371 S.W.2d 434 (1963). There a Quarterly County Court had appropriated substantial sums from general county funds and used them for elementary school purposes. Special school districts sought to recover a proportionate amount, but the Court held that the initial appropriations of the general funds to the school funds were illegal and unauthorized. It therefore enjoined future transfers of general funds into the school fund, but denied recovery of funds already

diverted, since they had not properly become part of the school fund subject to division between the county and the special school districts. *See also State ex rel. Cope v. Davidson County*, 198 Tenn. 24, 227 S.W.2d 396 (1955), holding unauthorized and illegal a county court appropriation from general funds for "teacher transportation" in the county schools.

[4] We believe that these principles are controlling here, and that the courts below erred in holding that the county could lawfully appropriate proceeds of the wholesale beer tax to school purposes, without specific statutory authorization.[2] The judgments are reversed as to this aspect of the case, and the cause is remanded to the Chancery Court with directions to enter a permanent injunction, restraining respondents from further allocating the beer tax proceeds to the annual county school budget. If additional county officials need to be joined for the purposes of such injunction, appropriate amendments to the pleadings and proper process should be allowed. For the reasons stated in the foregoing authorities, however, petitioners are not entitled to share in any previous beer tax proceeds which have been diverted into the county school funds.

C. *Retail Sales Tax Proceeds*

A different situation is presented as to retail sales tax proceeds. Under T.C.A.

2. Nothing in the statutes governing the beer tax authorizes the use of these tax receipts for school purposes. See T.C.A. §§ 57-301 et seq.

§ 67-3052(1), the county is directed to expend one-half of its sales tax proceeds for school purposes, and under T.C.A. § 49-605 these are to be divided with the city school system on an average daily attendance basis. Apparently these statutes have been complied with, and no issue has been made as to this one-half of the county retail sales tax receipts.

The governing body of the county, however, is authorized by T.C.A. § 67-3052(2)(a) to allocate the remainder of county sales tax receipts "to such fund or funds of the county" as it shall direct.

In accordance with these provisions the Quarterly County Court of Roane County has allocated the remaining portion of the county's share of retail sales tax proceeds to the school fund, to be used in meeting the annual budget for the county schools. This part of the sales tax proceeds has not been divided with the city school system.

[5] We are of the opinion that the contentions of the petitioners that these funds must be shared with the city school system are well taken, and that the courts below were in error in holding otherwise. The provisions of T.C.A. § 49-605 are mandatory. They require that all school funds for current operations and maintenance purposes collected by a county, except those used for pupil transportation, "shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year."

[6] In many well-considered cases since the first general education act was passed in Tennessee in 1925, it has been recognized that public education is essentially a state, rather than a county or municipal, function. The general education statutes contemplate a uniform state-wide system of public education.

In one of the leading cases on the subject, *Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 569 (1960), the general education statutes enacted up to that time were discussed in depth. In that case a private act purporting to authorize a different distribution of funds between the city and county school systems from that provided in what is now T.C.A. § 49-605 was held unconstitutional and potentially disruptive of the uniform system contemplated by the general statutes.

In that case, the Court said:

> "The general purpose and plan of the Education Acts passed by the Legislature of Tennessee, beginning with the Act of 1925, referred to hereinabove, was to establish and maintain a *uniform system* of public education in this State, public education being primarily a State function. The philosophy permeating such general uniform plan, as set out in said General Education Acts, in so far as pertinent to the issues in these causes, provides for a division of all county school funds, with the exception of funds for the transportation of pupils attending the public schools, between the County School System and the School systems operated by municipalities or special school districts, such as the City of Memphis and its Board of Education, within the county, on a proportional

basis of the average daily attendance of pupils attending the various schools in a county." 207 Tenn. at 345, 339 S.W.2d at 576.

Further, the Court said:

"Education of the youth of each county is the primary purpose of our State Educational System, as reflected throughout all of its General Education Acts, and the apportionment of local school funds under the general law on the basis of average daily attendance of pupils in the various schools gives to every school system its proportional and fair share of said funds, so, in a sense, each pupil may be afforded the same opportunity to obtain an education, regardless of place of residence." 207 Tenn. at 351, 339 S.W.2d at 578.

[909]

Respondents rely upon the provisions of T.C.A. §49-201(2) and (7), dealing with powers of the Quarterly County Court under the education statutes, as follows:

"(2) To consider, on the recommendation of the county board of education, school budgets for the county elementary and county high schools, and to provide necessary funds to enable said county board to meet all obligations under the adopted budgets."

* * *

"(7) To levy such taxes for county elementary and county high schools as may be necessary to meet

the budget submitted by the county board of education and adopted by the quarterly county court."

[7] These statutes have been held to permit the governing body of a county to make a special tax levy for the building, repair and equipment of county schools, without division under T.C.A. §49-605. *See Southern v. Beeler*, 183 Tenn. 272, 282-290, 195 S.W.2d 857 (1946); *State ex rel. Cope v. Davidson County*, 198 Tenn. 24, 29-31, 277 S.W.2d 396 (1955).

Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as had been done here with the portion of sales taxes at issue, then those funds become subject to the apportionment provisions of the general school statutes. In the *Southern* case, *supra*, the county allotted tax proceeds to the school budget under the guise of a special levy for repair and maintenance. It was held that these funds had to be divided with a city school system. *See* 183 Tenn. at 290-291, 195 S.W.2d 857.

Therefore, while the Quarterly County Court is certainly not obligated to allocate these receipts to a current school budget, when it does do so we are of the opinion that special school districts within the county are entitled to a proportionate part under T.C.A. §49-605. Accordingly, we are of the opinion that the courts below erred in holding that the second portion of retail sales tax proceeds appropriated by the Quarterly County Court to the annual school budget were not subject to division with the city school system.

In view of the conclusions reached by the Chancellor, he did not comment upon the evidence offered on this

subject, including the statistics filed with the answer of the respondents. Neither he nor the Court of Appeals considered whether division should be allowed with respect to any school years prior to the filing of the suit. Neither party has attempted to brief that question. The principal relief which petitioners have sought is a declaratory judgment.

Since the issues are not fully developed, we remand the cause to the Chancery Court for disposition of any further question concerning the division of these retail sales tax proceeds.

All costs incident to the appeal of this case are taxed to respondents. The Chancellor will fix all other costs.

COOPER, C. J., and FONES, HENRY and BROCK, JJ., concur.

APPENDIX E

State of Tennessee Statute

Section 49-605 Tennessee Code Annotated
(Emphasis Supplied)

"49-605. LEVYING OF SCHOOL TAX - FUNDS - EXPENDITURE - FISCAL ACCOUNTING. -A. *For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes received from the state, county, and other political subdivisions, if any.* However, any county which was a nonequalizing county in 1955-56 and which has within its borders a city or special district operating a system of public schools and which county in the current school year operates a system of public school transportation, may levy a special tax to cover that portion of the total cost of such public school transportation system as is over and beyond the allowed cost of pupil transportation within the minimum foundation school program of such county as determined under the provisions of subsection B of Sec. 49-602. The proceeds of such special transportation tax levy shall be set up in a special account hereinafter to be known as the 'Public School Pupil Transportation Fund' and shall be disbursed on order of the county board of education for public school transportation services only. *All school funds for current operation and maintenance purposes collected by any county, except the*

funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year. For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedure:

1. The county superintendent of schools shall recertify to the county trustee at the end of the first quarter of the current fiscal year the average daily attendance during the preceding school year.

2. During each of the first and second quarters of the current school year the county trustee shall use the average daily attendance figure for the preceding school year as recertified to him by the county superintendent of schools in making the tentative apportionments of the school funds as provided for in this subsection during the first and second quarters of the current school year.

3. Before the end of the third quarter of the current school year the county superintendent of schools shall certify to the county trustee the best estimate which he can make of the average daily attendance in the county schools and in the schools of the city and special school districts in such county, during the current school year; and upon this best estimate, the county trustee shall make the tentative apportionments of school funds for the third quarter of the current school year.

4. As early as possible before the close of the current school year, the county superintendent of schools shall certify to the county trustee the correct average daily attendance for the entire current school year.

5. Thereupon, the county trustee shall apportion the entire amount of county school funds for the current school year in keeping with the provisions of this subsection, on the basis of the correct total average daily attendance during the current school year in the county schools and in the respective city and special district schools, making such adjustments as may be necessary on account of the tentative apportionments made to such school systems during the first three quarters (3/4) of the current school year.

B. *A city or special school district participating in state minimum foundation school program funds shall raise and expend annually for current operation and maintenance of its schools an amount of money in addition to the amount required to be raised by the county* at least equal to that which a tax levy of fifteen cents (15¢) on each one hundred dollars ($100) of taxable property for the current year in said city or special school district would produce if the same were all collected.

C. The state school funds distributed under the provisions of this chapter to a county for county schools shall be paid to the county trustee in the amounts as certified under the authority of the state commissioner of education. Such funds for city schools or for special district schools shall be distributed directly to the treasurer or proper fiscal agent of such city or special school district in the amounts as certified under the

authority of the state commissioner of education. The county trustee shall be properly bonded as now provided by law, and the county judge or chairman of the county court shall so certify to the state commissioner of education. The city or special school district treasurer or fiscal agent shall be bonded under standards set up by the state comptroller, and the chairman of the board of education of such city or special school district, shall so certify to the state commissioner of education.

D. 1. The state commissioner of education shall prescribe a system of school fiscal accounting for all school systems, and he shall review the fiscal public school records in all school systems to the end that the expenditure of funds, whether for current operation and maintenance purposes, capital outlay purposes, or other school purposes, shall be properly accounted for and safeguarded.

2. Each school system shall within thirty (30) days after the beginning of each fiscal year, submit to the state commissioner of education, on forms prescribed by him, a complete and certified copy of its entire school budget for the current school year. Each school system shall on or before August 1 of each year submit to the state commissioner of education on forms prescribed by him, a correct and accurate financial report of the receipts and expenditures for all public school purposes in such school system, during the school year ending on the June 30 next preceding the August 1 hereinabove set forth. On or before July 15 of each school year, the county trustee of each county or the treasurer or fiscal agent of each city or special school district shall submit to

the state commissioner of education on forms prescribed by him a complete certified copy of the financial report of the respective school system. Each school system shall deliver to the state commissioner of education within ten (10) days of receiving the same, a copy of the audit report required by law to be made of the school funds of the said school system. No distribution of state funds shall be made to any school system which has not furnished the state commissioner of education with all records and reports required by this chapter and by other laws for the current or the preceding school year.

3. Each local board of education shall issue school warrants, or checks, on or before June 30 of each fiscal year for all contracts and other fiscal transactions for current operation and maintenance purposes for the current school year which have been completed by June 15 of the current school year.

4. Outstanding school warrants and obligations of a preceding school year or years shall not be paid out of either the state school funds for the current school year or the local funds required to be raised during the current fiscal year for participation in the state funds. State school funds received by a local school system shall be used exclusively for the operation and maintenance of the schools under the minimum foundation school program during the fiscal year unless otherwise provided by law.

E. Should it develop that by error an allocation of funds has been made to any school system not entitled to receive the same by virtue of a failure to comply with the requirements of this chapter, or otherwise, or if it

should develop that more funds have been distributed to any school system than such system is entitled to receive under the provisions of this chapter, such amount so erroneously distributed shall be returned to the state treasury by such school system; and upon a failure to do so, the state commissioner of education shall retain and withhold the amount thereof from any funds available for distribution to such school system in the current or any subsequent school year. If any school funds are misappropriated or illegally expended by a school system, an amount equivalent thereto shall be returned to the proper school fund; and upon a failure to do so, the state commissioner of education may retain and withhold the amount thereof from any funds available for distribution to such school system in the current or any subsequent school year.

F. In the event that the local fiscal body has not adopted a budget for the operation of the public schools by July 1 of any year, the school budget for the year just ended shall continue in effect until a new school budget has been approved. However, expenditures mandated by this chapter and implemented by rules, regulations, and minimum standards of the state board of education shall be incorporated into this continuing budget."

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-196

THE STATE OF TENNESSEE, EX REL.,
CONGER, ET AL.,
Petitioners,

vs.

MADISON COUNTY, TENNESSEE, ET AL.,
Respondents.

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. STATEMENT OF THE CASE 5

III. JURISDICTIONAL STATEMENT 7

IV. REASONS FOR DENYING THE WRIT 7

A. General. The Petitioners Have Not Met Any of the Requirements So As to Properly Invoke the Provisions of 28 U.S.C.S. 1257(3) 7

B. No "Federal Question" Was Presented to the State Courts for Consideration 9

C. No "Federal Question" Was Passed Upon by the State Court, nor Was a Decision Upon a "Federal Question" Determinative of the Principal Issue 11

D. The State Court Decision Was Based Upon State Grounds, Which Were Totally Adequate and Supportive of That Decision 13

E. The Tennessee Supreme Court Decision of *City of Harriman v. Roane County*, is readily Distinguishable, and Does Not Support Petitioners' Case 14

F. "Federal Funds" Do Not Categorically Become "County Funds", As Alleged by Petitioners 15

V. CONCLUSION 17

VI. CERTIFICATE OF SERVICE 18

APPENDIX A - Petitioners' Complaint Circuit Court of Madison County, Tennessee A1

APPENDIX B - Judgment
Circuit Court of Madison County, Tennessee A11

APPENDIX C - Petitioners' Petition for Certiorari
Supreme Court of Tennessee A16

Table of Authorities

CASES

Black v. Cutter Laboratories, (1956) 351 U.S. 292, 100 L.ed. 1188, 76 Sup.Ct. 824 ..... 12, 14

City of Harriman v. Roane County, 553 S.W.2d 904 (1977) 13, 14

Commercial Bank v. Rochester, (1873) 15 U.S. 639, 21 L.ed. 117 11

Cox v. Texas, (1906) 202 U.S. 446, 50 L.ed. 1099, 26 Sup.Ct. 671 10

Crowell v. Randall, (1836) 10 U.S. 368, 9 L.ed. 458 8

Edwards v. Elliott, (1874) 21 U.S. 532, 22 L.ed. 487 10

Herb v. Pitcairn, (1945) 324 U.S. 117, 89 L.ed. 789, 65 Sup.Ct. 459 ..... 12, 14

Holley v. Lawrence, (1943) 317 U.S. 518, 87 L.ed. 434, 63 Sup.Ct. 394 14

Honeyman v. Hanan, (1936) 300 U.S. 14, 81 L.ed. 476, 57 Sup.Ct. 350 ..... 9, 11, 12

Keokuk & H. Bridge Co. v. Illinois, (1900) 175 U.S. 626, 44 L.ed. 299, 20 Sup.Ct. 205 9

Moore v. Mississippi, (1875) 21 U.S. 636, 22 L.ed. 653 12

Southwestern Bell Telegraph Company v. Oklahoma, (1938) 303 U.S. 206, 82 L.ed. 751, 58 Sup.Ct. 528 ..... 9, 11, 12

State of Tenn., ex rel., Conger, et al. v. Madison County, Tenn., et al., 581 S.W.2d 632 ..... 6, 16

STATUTES AND RULES

Tennessee Code Annotated, Section 5-924 .....8, 15, 16

Tennessee Code Annotated, Section 49-605 .....2, 3, 5, 7, 8, 10, 11, 13, 16

Tennessee Supreme Court Rules, Rule 12 4

Tennessee Supreme Court Rules, Rule 14 4

28 U.S.C.S., Section 1257(3) 2, 7, 8, 11, 17

31 U.S.C.S., Section 1243(a)(4) 14, 15

31 U.S.C.S., Section 1243(4)1 7

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BRIEF IN OPPOSITION

I.

PRELIMINARY STATEMENT

Since the petitioners, in their petition for Writ of Certiorari, have set out references to the opinion below, have made a statement of the grounds on which jurisdiction of this Court is invoked, and the questions presented for review, the respondents will not burden the record by repeating the same. However, since respondents challenge the validity of the Question Presented, and the completeness of the Statement of Facts, they will touch upon same in keeping with the position taken in this reply brief.

Jurisdiction

While the respondents acknowledge that the petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C.S., Section 1257(3), they respectfully submit, that as their brief will clearly indicate, this Court does not have jurisdiction of this case and the issues presented.

Question Presented

Petitioners have so framed this section of their petition as to indicate to this Court that there is a federal question in this litigation, and that it was utilized as a basis for initiating this action against the respondents. Petitioners omitted filing as an appendix to their petition a copy of their complaint, which initiated this action in the Circuit Court of Madison County, Tennessee, and perhaps for good reason. A detailed examination of petitioners' complaint, which appears as Appendix A, clearly indicates that at no place in the complaint was a federal statutory or constitutional issue raised. To the contrary, the only statutory question presented was the interpretation and application of a singular Tennessee code section, namely, Section 49-605, T.C.A.

The crux of the petitioners' complaint against respondents Madison County and its officials is set forth in paragraphs 7 and 8 therein, appearing in Appendix A, page A-5. These basic allegations are that for two fiscal years, revenue sharing funds allocated to Madison County, Tennessee were appropriated as a part of that county's budget to the school fund, and in neither case were these funds shared with the City of Jackson, which operates a school district within Madison County, as the city alleged should have been done, pursuant to Section 49-605, T.C.A. By way of relief, the petitioners asked for an injunction,

mandating that Madison County should allocate these revenue sharing funds in accordance with *Section 49-605, T.C.A.* (emphasis supplied).

The Circuit Court of Madison County, Tennessee entered judgment for petitioners, decreeing that apportionment of federal revenue sharing funds was mandated by the provisions of Section 49-605, T.C.A. The involvement or recognition of any federal statute of any type was as totally absent from the judgment of the trial court, as it was from the pleadings in the trial court. See Appendix B, pages A-11-A-15.

Respondents herein perfected their appeal to the Tennessee Court of Appeals, wherein a singular assignment of error was filed, to the effect that the trial court had misconstrued and misapplied Section 49-605, T.C.A. Within hours after hearing argument, the Court of Appeals handed down its opinion, reversing the trial court, holding that Section 49-605, T.C.A. had no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended. The opinion of the Court of Appeals appears as Appendix B, page 41, et seq., petitioners' brief. It should be noted that in that opinion no reference was made to any federal statute or regulation, nor is the application or interpretation of any federal statute made the rationale for the decision of that court.

As the petition in this cause reflects, petitioners then sought to have that judgment of the Court of Appeals reviewed by the Tennessee Supreme Court, by means of certiorari. Appellate review by certiorari in Tennessee is somewhat similar to that in the federal system, in that it is a privilege rather than a right, but the statutory jurisdiction is somewhat broader than in the federal system.

Rule 12, Tennessee Supreme Court Rules, requires that:

> "The petition (for certiorari) shall state the substance of the case so as to show a prima facie error or errors in the judgment or decree of the intermediate court and how petitioner is prejudiced thereby."

Likewise, Rule 14 of the Tennessee Supreme Court states in part that:

> "Assignment of Errors. The assignment of errors shall contain in the order herein stated:
>
> (2) Errors specified, how. A statement of the errors of fact or law relied upon to reverse or modify the same, showing specifically wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant, or plaintiff in error, and references to the pages of the record where the ruling of the court on matters constituting errors of law appears . . ."

Again it is noted that as revealed in the Court of Appeals opinion, Appendix B, petitioners' brief, page 41, et seq., there was no reference in the decision to any federal statute. Therefore, the assignment of error to the Tennessee Supreme Court relied upon as stating a federal question is not in keeping with the rules of that court.

Now that petitioners are in the federal system, they state on page 4 of their brief that the question thereby presented is:

> "Whether or not the decision of the Supreme Court of Tennessee interpreting Section 49-605, T.C.A., has caused such state statute to become in violation of the provisions of Title 31, Section 1243(4)1, U.S.C.A. . . ."

However, when in the state system, in both the Tennessee Court of Appeals and the Tennessee Supreme Court, by means of identical language, as may be seen on page A-36 of petitioners' Petition for Certiorari, Appendix C, the petitioners presented the issue thusly:

> "Based on the above facts, the question very simply is—does Section 49-605 Tennessee Code Annotated require that all funds appropriated by the county court to the county school system for current operation and maintenance, including funds derived from the county from federal revenue sharing funds granted to the county be apportioned . . . between the county school system and . . . the Jackson city school system."

II.

STATEMENT OF THE CASE

Except for some editorializing by petitioners as to the effects of the action of respondents, such as would give the appearance that the action of the respondents was somewhat contrived and sinister, the basic facts are not in dispute and are correctly stated.

Up until the latter part of the fiscal year 1976-1977, the only revenues Madison County, Tennessee had received and thus appropriated for school operation and maintenance purposes with the City of Jackson were those revenues as classified by Section 49-605, T.C.A. Furthermore, since the latter half of that fiscal year, up until the present time, Madison County has declined to apportion with the City of Jackson that portion of the school funds derived under federal revenue sharing. There is nothing sinister or deliberate about this action. Under the Federal Revenue Sharing Act, technically called the State and Local Fiscal Assistance Act of 1972, education

was not an enumerated, permitted use until the section governing uses was repealed on October 3, 1976, by Congress. Only then were counties and cities free to use federal revenue sharing funds for educational purposes.

Since fiscal 1976-77, the City of Jackson has used its entire allocation of federal revenue sharing funds for education.

While the petitioners talk in terms of "losses" to the cities, by the same token the record reflects that the unapportioned use of federal revenue sharing funds, aside from being statutorily valid, is not only the last vestige of hope for counties to improve their educational position in Tennessee, but it is also the only fair and equitable approach, as noted by the Tennessee Supreme Court at page 639 of its opinion.[1] The petitioner City of Jackson is attempting to have declared null and void the action of the respondent Madison County, Tennessee to use its revenue sharing funds in its school fund without apportionment with the city. The petitioners have neglected to advise the Court that in using its full appropriation of federal revenue sharing funds in its own school fund without apportioning same with the county, that under the Federal Revenue Sharing Act it has improved its "tax effort", and thus will be able in the years to come to take a larger bite of federal revenue sharing funds allocated to county areas before the division between the cities located therein and their respective counties.

---

1. *See State of Tenn., ex rel., Conger, et al. v. Madison County, Tenn., et al.*, 581 S.W.2d 632.

III.

JURISDICTIONAL STATEMENT

This Court does not have jurisdiction over this case, for the reasons that the issues presented and decided in the state court do not place this case within the purview of 28 U.S.C.S., Section 1257(3).

IV.

REASONS FOR DENYING THE WRIT

A. General. The Petitioners Have Not Met Any of the Requirements So As to Properly Invoke the Provisions of 28 U.S.C.S. 1257(3).

Petitioners claim that a "federal question" is presented by this case, and that question is not that the decision of the Tennessee Supreme Court interpreting a state statute was violative of a federal statute, but is purely a rhetorical one, *whether or not* (emphasis supplied) the decision of the Supreme Court of Tennessee, interpreting Section 49-605 Tennessee Code Annotated has caused such state statute to become in violation of 31 U.S.C.S., Section 1243 (4)1. The primary thrust in the petition is that this decision of the Tennessee Supreme Court gives federal revenue sharing funds a special protection contrary to the provisions of the federal revenue sharing law, cited above, the thrust of which is that local governments "will provide for the expenditure of amounts received under subchapter 1 of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenue . . ."

Respondents contend on the other hand that up until the present time petitioners have insisted that the only issue was whether or not Section 49-605, T.C.A. required

federal revenue sharing funds to be allocated to local school districts as were other local revenues, and that both the Court of Appeals and the Supreme Court have simply applied accepted principles of statutory construction, holding that under Section 49-605, T.C.A., federal revenue sharing funds are not revenues derived from states or subdivisions thereof, and hence are not subject to being apportioned under that particular code section. The respondents and the courts of Tennessee have done nothing in contravention or contradiction of the Federal Revenue Sharing Act, but have on the other hand, to the contrary, followed the act, for the Tennessee Supreme Court, which is charged with the interpretation of state statutes, has interpreted, as has the Court of Appeals, that federal revenue sharing funds are not local funds within the meaning of this act. As will be shown later, as was done in Section 5-924, T.C.A., the Legislature can add the classification "federal funds", and this would change the color of the picture entirely, and federal revenue sharing funds would then be subject to the provisions of 49-605.

The general rule as to what must appear in order to justify this Court taking jurisdiction to review a decision of a state appellate court were first laid down in the case of *Crowell v. Randall,* (1836) 10 U.S. 368, 9 L.ed. 458. This decision of course was handed down many many years prior to the codification of 28 U.S.C.S. 1257(3).

That Court stated that it must appear upon the face of the record (1) that some one of the questions stated in that section (of the federal statute involved) did arise in the state court; (2) that the question was decided by the state court; (3) that it was not necessary that the question should appear on the record to have been raised, but that it must appear that it was raised and must have been decided in order to have induced the judgment of the

state court; and (4) that it is not sufficient to show that a question might have arisen or been applicable to the case, unless the record further shows that it did arise and was applied by the state court to the case.

B. No "Federal Question" Was Presented to the State Court for Consideration.

A preliminary step in showing that the state court's decision turned on a federal question, and one which this Court has uniformly recognized as essential, is to show that such a question actually arose in the case. Among the numerous cases supporting this proposition are *Honeyman v. Hanan,* (1936) 300 U.S. 14, 81 L.ed. 476, 57 Sup.Ct. 350 and *Southwestern Bell Telegraph Company v. Oklahoma,* (1938) 303 U.S. 206, 82 L.ed. 751, 58 Sup.Ct. 528.

It must be shown that there was something in the case before the state court which at least would call that court's attention to the federal question as one that was relied upon by the party. *Keokuk & H. Bridge Co. v. Illinois,* (1900) 175 U.S. 626, 44 L.ed. 299, 20 Sup.Ct. 205.

In the present petition petitioners rely heavily upon what they have identified as their seventh Assignment of Error in the Petition for Certiorari from the Tennessee Court of Appeals to the Tennessee Supreme Court as identifying their "federal question." But this is not enough. Respondents point out that this not only fails to comply with the rules of the Tennessee Supreme Court regarding appellate practice and procedure, but it also fails to measure up to the standards prescribed by this Court in past decisions. Nowhere in petitioners' original complaint, by which this action was first brought, is there any mention of any federal statute or right. The thrust of their complaint is that respondent Madison County, Tennessee, had failed to do certain fiscal acts, as required to be done by state stat-

ute. See petitioners' complaint, Appendix A, page A-5. The judgment of the trial court, the only one adverse to the respondents, made no mention of any federal statute or right, but turned solely and alone on the construction and application of Section 49-605, T.C.A. See Appendix B, trial court judgment, page A-14. The decision of the Court of Appeals, Western Section, State of Tennessee, found as Appendix B, petitioners' brief, pages 41 et seq., was based solely and alone upon its construction and application of Section 49-605, T.C.A. The singular issue framed in the Petition for Certiorari, in the body of the argument, by petitioners was the interpretation and application of 49-605, T.C.A. See Appendix C herein, petitioners' petition for certiorari, page A-36.

In the case of *Edwards v. Elliott,* (1874) 21 U.S. 532, 22 L.ed. 487, it was therein held that it was not enough to give jurisdiction to the United States Supreme Court that it should appear that in the assignment of errors in the state appellate court that a complaint was made that the trial court improperly decided that the lien law of the state was valid and constitutional, where it was not alleged in the trial court that the law was repugnant in any particular provision of the Constitution of the United States. In the later case of *Cox v. Texas,* (1906) 202 U.S. 446, 50 L.ed. 1099, 26 Sup.Ct. 671, it was held that a federal question, although referred to in the assignment of error in the state appellate court and in the Supreme Court of the United States, could not be considered by the latter court where it did not appear that the state court dealt with the question and it might have refused to do so on the ground that it was not raised in the trial court.

The above authorities have inherent within them a basic assumption which respondents state is not present in this case and thus make them even stronger authority.

That basic assumption is that in the above authorities there in fact was a federal question, but it was not properly presented. It is respondents' position that not only was no federal question properly presented, but there was no federal question in existence in the first place.

C. No "Federal Question" Was Passed Upon by the State Court, nor Was a Decision Upon a "Federal Question" Determinative of the Principal Issue.

There is a second requirement that petitioners have not met, that is co-extensive with the first one discussed in B. above and that is, a showing by the petitioners that the state court actually passed upon and decided a federal question of the character mentioned in 28 U.S.C.S. 1257(3). *See Honeyman v. Hanan, supra; Southwestern Bell Telegraph Company v. Oklahoma, supra.*

In the case of *Commercial Bank v. Rochester,* (1873) 15 U.S. 639, 21 L.Ed. 117, the Supreme Court said:

> "It has been so often held by this court that the question on which the plaintiff in error relies to give it jurisdiction must appear to have been decided by the state court, that it has become one of the settled principles on that subject."

As the record clearly indicates, the "principal issue" in this case is whether or not under a Tennessee statute, namely, Section 49-605, T.C.A., funds received by counties known as federal revenue sharing funds must be apportioned, when allocated by the county to its school budget, with any other independent school district within the county. In order to invoke jurisdiction under 28 U.S.C.S. 1257(3), in addition to the two requirements that have already been considered, there is another, and that is a showing that the decision of the federal question by the

State Appellate Court was necessary to a determination of the case. It must therefore appear from the record, either affirmatively or by a fair implication, that the decision of the federal question was necessary to decide the lawsuit. *See Honeyman v. Hanan, supra; Southwestern Bell Telegraph v. Oklahoma, supra. See also Herb v. Pitcairn,* (1945) 324 U.S. 117, 89 L.ed. 789, 65 Sup.Ct. 459.

Thus where the record shows that the judgment of the state court was properly based upon a ground which did not involve a federal question, it is a matter of no consequence as far as the jurisdiction of the United States Supreme Court is concerned that it appears that the state appellate court went further and decided a federal question, since a decision of such question was not necessarily involved in the determination of the cause. *Moore v. Mississippi,* (1875) 21 U.S. 636, 22 L.ed. 653.

A mere discussion of a federal question in the opinion of a state appellate court is insufficient to give the U.S. Supreme Court jurisdiction to review it, since the Supreme Court reviews the judgments of state courts and not statements and opinions. *See Black v. Cutter Laboratories,* (1956) 351 U.S. 292, 100 L.ed. 1188, 76 Sup.Ct. 824.

The authorities referred to above are even stronger when applied to the case under consideration, for in each of them there was a federal question and a federal question duly raised but the case was decided on a non-federal question grounds.

The opinion of the Tennessee Supreme Court in plain and simple language shows that its rationale did not turn on any "federal question." See Petitioner's Brief, Appendix C.

D. The State Court Decision Was Based Upon State Grounds, Which Were Totally Adequate and Supportive of That Decision.

An examination of this record clearly reveals that the decision of the Tennessee Supreme Court in this case was based purely and alone upon state grounds, and that these state grounds were totally adequate to support the decision. First of all, after reviewing several state statutes and state court decisions, the Tennessee Supreme Court, at page 638, held that federal revenue sharing funds may be allocated for school purposes.

They next considered the application and implication of the case of *City of Harriman v. Roane County*, 553 S.W. 2d 904 (1977), which petitioners have continuously insisted dictated the outcome of this case, and that the case should be decided in their favor. Both Appellate Courts have disagreed with petitioners with the very court that authored *Harriman* stating:

> "We, therefore, hold that federal revenue sharing funds may be allocated for school purposes. Nothing in our recent case of *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977) alters this conclusion." Page 638.

Lastly, on the question of apportionment, the Tennessee Supreme Court examined the Tennessee statute, Section 49-605, T.C.A. and stated at page 639:

> "By its very phraseology this statute cannot be applicable to federal revenue sharing funds, the source of which is the federal government. Money received from the federal government obviously is not received from a state, county, or other political subdivision (as provided by the statute)."

A corollary to the rule argued in Section C above, to the effect that a review by this Court of a state appellate

court decision requires a showing that there was a decision on a federal question which was necessary to that court's determination, is the additional rule that there can be no review by this Court if the judgment of the state appellate court, although it might embody a ruling on a federal question, finds support in adequate state grounds, apart from any federal question. *Holley v. Lawrence*, (1943) 317 U.S. 518, 87 L.Ed. 434, 63 Sup.Ct. 394; *Herb v. Pitcairn, supra; Black v. Cutter Laboratories, supra.*

E. The Tennessee Supreme Court Decision of *City of Harriman v. Roane County*, Is Readily Distinguishable, and Does Not Support Petitioners' Case.

Petitioners in support of their petition for certiorari cite *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977), as establishing proper guidelines for the appropriating of Federal Revenue Sharing Funds. However, the opinion of the Tennessee Supreme Court negates this proposition. In discussing this recent opinion in the case now under consideration, that court notes that *City of Harriman* was dealing with conventional State and County revenues, governed by state statutory and decisional law with which we are not here dealing, and, therefore, *City of Harriman* would certainly not be applicable. The Supreme Court of Tennessee in its opinion did establish—and properly so—what the State laws and procedures applicable to the expenditure of its own revenues are, as well as what they are not. This is in no way contradictory to the requirements of 31 U.S.C.S. 1243(a)(4).

> "Nothing in our recent case of *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977) alters this conclusion. In that case we were dealing with conventional county revenues, expenditure of which is governed by state statutory and decisional law. We held

that the proceeds of the wholesale beer tax could not lawfully be appropriated to school purposes 'without specific statutory authorization,' 553 S.W.2d at 907, and that although the second half of the retail sales tax proceeds could be so used, they must be apportioned in accordance with Sec. 49-605 T.C.A.

(4) "Again, in the instant case we do not deal with conventional state or county revenues, but with funds that come to local governments with the restriction that they will be expended 'in accordance with the laws and procedures applicable to the expenditure of its own revenues.' 31 U.S.C. Sec. 1243(a)(4). There is no Tennessee law that precludes the use of these funds for any legitimate county purpose."

F. "Federal Funds" Do Not Categorically Become "County Funds", As Alleged by Petitioners.

Petitioners categorically state that the General Assembly of the State of Tennessee in Chapter 9 "Appropriation and Disbursement of Funds," under the general provisions, "Counties", has specified in Section 5-924, Tennessee Code Annotated, that federal funds are county funds. This proposition on its face is clearly erroneous. The semantics of the title and body of Section 5-924, Tennessee Code Annotated, "Appropriation of Certain Funds to Use of Various Departments and Agencies" is uncontradictable that the subject is the appropriation of funds and the establishing of county legislative bodies as the appropriative entity for the designated funds.

In fact, the Legislature of the State of Tennessee, obviously conscious of federal funding, and distinguishing between federal and state funding, amended Section 5-924 of the Tennessee Code Annotated in 1976 by inserting "*federal funds*" (emphasis supplied) to funds which

shall be appropriated by the County Legislative bodies, yet the Legislature did not see fit to amend the statute relied upon by the petitioners, Section 49-605, Tennessee Code Annotated, to include federal funds.

In the case under consideration, the Supreme Court of Tennessee, in commenting on the above, stated:

> "There is, however, another statute, not cited by the principal parties, but relied upon by the Surety on the Trustee's bond, which we consider to be highly significant. Sec. 5-924, T.C.A. reads as follows:
>
> "All funds from whatever source derived, including but not limited to taxes, county aid funds, *federal funds,* and fines, which are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices, and agencies of county governments shall be appropriated to such use by the county legislative bodies. (Emphasis supplied).
>
> "It should be noted that this statute, as originally enacted in 1959 did not include federal funds. By Chapter 615 of the Public Acts of 1976 the original language was changed by adding the words 'federal funds'. No other change was made. Section 49-605, however, was not amended." *State of Tenn., ex rel., Conger, et al. v. Madison County, Tenn., et al., supra,* p. 637.

V.

CONCLUSION

The contentions of the petitioners pose no "federal question". By no stretch of the imagination, nor in the light of all of the authorities, does the case of the petitioners meet any of the requirements of 28 U.S.C.S. 1257(3) so as to confer jurisdiction upon this Court. It is therefore respectfully submitted that the Petition for Writ of Certiorari in all justice should be denied.

Respectfully submitted,

HEWITT P. TOMLIN, JR.
County Attorney
106 South Liberty Street
Jackson, Tennessee 38301
Attorney for Respondents, Madison County, Tennessee; Walter Baker Harris, County Judge, Madison County, Tennessee; Leon Johnsey, Trustee, Madison County, Tennessee

JACK MANHEIN, JR.
First National Bank Building
Jackson, Tennessee 38301
Attorney for Respondent, Transamerica Insurance Company

Of Counsel:

WALDROP, HALL, TOMLIN & FARMER
106 South Liberty Street
Jackson, Tennessee 38301

VI.

CERTIFICATE OF SERVICE

We, Hewitt P. Tomlin, Jr., and Jack Manhein, Jr., do hereby certify that we have this day mailed, postage prepaid, three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Tennessee to Russell Rice, Esq., Third Floor, Fox Building, Jackson, Tennessee 38301, this the 19th day of September, 1979.

HEWITT P. TOMLIN, JR.
JACK MANHEIN, JR.

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT FOR MADISON COUNTY, TENNESSEE

R.D. No. 77-164

THE STATE OF TENNESSEE, EX REL, ROBERT CONGER, BEN LANGFORD, and JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System;
Residents of Madison County, Tennessee,
PLAINTIFFS,

VS.

MADISON COUNTY, TENNESSEE, a political sub-division of the State of Tennessee;

AND

WALTER BAKER HARRIS, County Judge of Madison County, Tennessee;

AND

LEON JOHNSEY, Trustee of Madison County, Tennessee;
Residents of Madison County, Tennessee;

AND

TRANSAMERICA INSURANCE COMPANY,
Resident of the State of California,
DEFENDANTS.

COMPLAINT

(Filed August 24, 1977)

The Relators respectfully would show unto the Court as follows:

1. That the City of Jackson, Tennessee is a municipal corporation lying within the boundary of Madison County, Tennessee; that the Relators are the duly elected Board of Commissioners of such City, and as such are the School Board of the City of Jackson School System, a special school district within Madison County, Tennessee within the meaning of Section 49-605, Tennessee Code Annotated.

2. That Madison County, Tennessee is a political subdivision of the State of Tennessee governed by a Quarterly County Court; that such Court has legislative power for the County, including the approving of budgets and the appropriation of funds to the various departments of the County, and specifically, to the School Department of Madison County, Tennessee; that said County operates a school system in the area of Madison County outside of the Corporate Limits of the City of Jackson, which system is administered by a School Board elected by the Madison County Quarterly Court; that said County School Department is financed by taxation levied throughout Madison County, Tennessee, by State Sales Tax income derived from retail sales within Madison County, Tennessee, by other State appropriations for educational purposes, and, beginning in 1977, at the end of the 1976-77 fiscal year, by use of General Revenue Sharing Funds derived from the Federal Government.

3. That the Defendant, Walter Baker Harris, as County Judge of Madison County, Tennessee, is the chief

administrative and fiscal officer of Madison County, Tennessee, and charged, among other things, with the management of fiscal affairs of said County and the issuance of County warrants for funds to various departments, including the County School Department.

4. That the Defendant, Leon Johnsey, is the duly elected County Trustee of Madison County, Tennessee, charged with the responsibility of maintaining, conserving and applying the funds of Madison County, Tennessee in accordance with law and more particularly in compliance with Section 49-605, Tennessee Code Annotated.

5. That under the provisions of Section 49-605, Tennessee Code Annotated, all school revenues for current operation and maintenance of Madison County schools, regardless of source, are required to be placed in one separate school fund, (except revenues derived from a transportation tax levy); that under said Section, the County Trustee of Madison County is required to apportion all such school revenues, except the transportation fund, between the County School System and the City of Jackson School System, a Special School District within the County, on the basis of the average daily attendance maintained by each, during the current school year. The pertinent parts of this Code Section are as follows:

> "49-605. Levying of school tax - Funds - Expenditure - Fiscal accounting. - A. For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. *Each* system *shall* place in *one* separate school fund *all school revenues* for current school operation purposes received from the state, county, and other political subdivisions, if any. However, any county which was a non-equalizing county in 1955-56 and which has with-

in its borders a city or special district operating a system of public schools and which county in the current school year operates a system of public school transportation, *may* levy a special tax to cover that portion of the total cost of such public school transportation system as is over and beyond the allowed cost of pupil transportation within the minimum foundation school program of such county as determined under the provisions of subsection B of § 49-602. The proceeds of such special transportation tax levy shall be set up in a special account hereinafter to be known as the 'Public School Pupil Transportation Fund' and shall be disbursed on order of the county board of education for public school transportation services only. *All school funds for current operation and maintenance purposes collected by any county,* except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, *shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year.* For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedure:" (Underscoring supplied.)

6. Relators would show unto the Court that in the Spring of 1977, the Quarterly County Court appropriated from Federal Revenue sharing funds to the Madison County School Fund, for the purpose of meeting a 1976-77 budget deficit in operation and maintenance in such Department, the sum of $201,476.00; that on June 30, 1977

a warrant in the amount of $90,000.00 was drawn by the County Judge favor of the Madison County School Fund, and such sum was placed by the County Trustee in the "Public School-County" fund. On July 12, 1977, a warrant in the amount of $111,476.00 was likewise drawn by the County Judge, favor of the Madison County School Fund, and such sum likewise was deposited by the County Trustee in the "Public School-County" fund carried on the cash journal of Madison County, Tennessee. The said "Public School-County" fund is the only fund for current operation and maintenance of county schools carried by the Trustee for the Madison County School Department.

7. That the sum of $201,476.00 appropriated by Madison County to the Madison County School fund and deposited by the County Trustee into the single fund carried by such Trustee for such school department was not apportioned to the City of Jackson as required by Section 49-605, Tennessee Code Annotated, and the entire sum has been expended by the Madison County School Department.

8. That in July 1977, the Madison County Quarterly Court adopted its budget for the 1977-78 fiscal year, and in so doing, appropriated to the Madison County School Fund for current operation and maintenance the sum of $728,047.72 from County taxation, and the sum of $565,-862.51 from general revenue sharing monies received from the Federal Government; that such sum has not, at this time, been apportioned between Madison County Schools and the City of Jackson Schools, and the officials of Madison County, including the County Judge, the County Trustee, and members of the Quarterly County Court have publicly stated that the sum of $565,862.51, appropriated from Federal Revenue Sharing Funds, will not be apportioned as required by Section 49-605, Tennessee Code Annotated.

9. Relators aver that any action of the County Judge, County Trustee, and/or the Quarterly County Court undertaking to prevent apportionment with the City School Department of funds appropriated to the Madison County School Department for current operation and maintenance, whatever the source, is unlawful and beyond the power of the County Judge and/or the Quarterly County Court to require; that the County Trustee of Madison County, Tennessee is not subject to the control nor direction of the Quarterly County Court or the County Judge; that in failing to follow the direction and requirements of Section 49-605, Tennessee Code Annotated, by making an apportionment, the County Trustee has violated the law and committed a misfeasance in office; that for the sums appropriated for 1976-77 fiscal year to the Madison County School Department, without apportionment, and expended by the Madison County School Department, the County Trustee and Transamerica Insurance Company, Surety, are liable to the City of Jackson for the amount which the City of Jackson School Department would have received had a lawful apportionment been made, or a total of $97,836.75.

10. Relators further aver that should the County Trustee fail to apportion to the City of Jackson its part of the $565,862.51 in the 1977-78 school budget, even though such sum has not been expended at this time, he will likewise violate the law, commit a misfeasance in office, and for any sums expended hereafter unless and until such apportionment be made, the County Trustee and his Surety will be liable to the City of Jackson School Department.

11. Defendant, Transamerica Insurance Company, as Surety on the fidelity bond of Thomas Leon Johnsey, Sr., County Trustee, is likewise liable to the City of Jack-

son School Department to the same extent that the County Trustee is liable as per the terms of the bond executed by this Defendant. A copy of such bond is attached hereto and marked Exhibit "A" to this Complaint.

12. That in failing to apportion the County School Fund in accordance with the requirements of Section 49-605, Tennessee Code Annotated, the Defendants are discriminating against the taxpayers and school children residing in the City of Jackson, contrary to the General Education Act of the State of Tennessee; that the appropriating of Federal Revenue Sharing Funds to the County School Department and in the failing to apportion same was a deliberate pre-determined act by County officials, the purpose of which was to evade the apportionment requirements of Section 49-605, Tennessee Code Annotated.

13. That unless restrained by order of this Court, Relators believe and aver that the County Judge will continue to issue warrants and the County Trustee will expend to the Madison County School Department the sum in question which has been appropriated from Federal Revenue Sharing Funds under the 1977-78 budget, and Relators, therefore, aver that this is a proper case for the issuance by this Court of a temporary injunction commanding the County Judge and the County Trustee not to issue warrants and/or expend any of such $565,862.51 pending further order of this Court.

14. Relators aver that this is a proper case for the issuance by this Court of the Writ of Mandamus commanding Madison County, Tennessee and the Madison County Quarterly Court to levy such taxes on property outside the Corporate Limits of the City of Jackson as required, or otherwise provide such funds, for the purpose of providing funds to the County Trustee to pay the apportionment of $201,476.00 due the City of Jackson School

Department which was unlawfully withheld and is already spent.

15. Relators believe and aver that the County Trustee will not apportion the sum of $565,862.51 appropriated in the 1977-78 budget of the School Department from Federal Revenue Funds unless compelled to do so by this Court and that, therefore, this is a proper case for the issuance by this Court of its Writ of Mandamus directed to the County Trustee of Madison County, Tennessee, commanding said Trustee to apportion between the City and County all school funds in the 1977-78 appropriation, except transportation levy, including any sums appropriated from Federal Revenue Sharing Funds, appropriated to Madison County School Department for current operation and maintenance in accordance with law.

WHEREFORE, PLAINTIFFS PRAY:

1. The Declaratory Judgment of this Court that all funds, including funds derived from Federal Revenue Sharing Grants, lawfully appropriated by the Madison County Quarterly Court for the current operation and maintenance of county schools, shall be placed in one separate school fund.

2. The Declaratory Judgment of this Court that all monies lawfully appropriated to the County School Fund for current operation and maintenance shall be apportioned by the County Trustee between the County School System and the City of Jackson School System, including any funds placed therein from the Federal Revenue Sharing Grants.

3. That the City of Jackson have and recover of Madison County, Tennessee, of Thomas Leon Johnsey, Sr., County Trustee, and his Surety, Transamerica Insurance Company, a judgment in the amount of $97,836.75 in dam-

ages arising out of the failure of the County Trustee to apportion the special appropriation of $201,476.00 made by the Quarterly County Court to the County School Fund to cover a deficit in the current operation and maintenance fund for the 1976-77 school year; and that this Court issue its Writ of Mandamus compelling and requiring the Quarterly County Court of Madison County, Tennessee to levy such taxes as may be required upon all of the property in Madison County, Tennessee outside of the Corporate Limits of the City of Jackson to pay such judgment.

4. That this Court issue its Writ of Mandamus requiring County Trustee, Thomas Leon Johnsey, Sr., to apportion all funds lawfully appropriated by the Quarterly County Court for the current operation and maintenance of County Schools for the 1977-78 school year, including any sums appropriated from a grant to Madison County, Tennessee under the Federal Revenue Sharing Law.

5. That this Court issue a preliminary injunction enjoining and restraining Madison County, Tennessee, the Quarterly County Court of Madison County, Tennessee, County Trustee Thomas Leon Johnsey, Sr., and/or Walter Baker Harris, County Judge, from appropriating, disbursing, spending, encumbering, or in any other way seeking to make a disposition of all sums of Federal Revenue Sharing monies in the possession now or to become in the possession later of the Trustee until such time as the issues here enjoined have been settled and resolved by this Court.

6. That at the hearing of this cause the Court issue a permanent injunction commanding Madison County, Tennessee, its Quarterly County Court, its County Judge, and its County Trustee to cease and desist from any and all acts of discrimination against the school children and the citizens residing within the City of Jackson by failing

and refusing to apportion County School Funds in accordance with the provisions of Section 49-605, Tennessee Code Annotated.

That Plaintiffs have such other and further relief as they may be entitled. This is the first application for extraordinary process.

Sidney Spragins, Assistant City Attorney
Elks Building
Jackson, Tennessee 38301

/s/ Russell Rice
Russell Rice, City Attorney
Third Floor, Fox Building
Jackson, Tennessee 38301

APPENDIX B

IN THE CIRCUIT COURT FOR MADISON COUNTY TENNESSEE

R. D. NO. 77-164

THE STATE OF TENNESSEE, EX REL. ROBERT CONGER, BEN LANGFORD, and JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System;
Residents of Madison County, Tennessee,
PLAINTIFFS,

VS.

MADISON COUNTY TENNESSEE, a political sub-division of the State of Tennessee;

AND

WALTER BAKER HARRIS, County Judge of Madison County, Tennessee;

AND

LEON JOHNSEY, Trustee of Madison County, Tennessee;
Residents of Madison County, Tennessee;

AND

TRANSAMERICA INSURANCE COMPANY,
Resident of the State of California,
DEFENDANTS.

JUDGMENT

This cause came on to be heard on the 7th day of December, 1977 before the Honorable Gene Walker, Circuit

Judge, upon the original Complaint, as amended, the answers of the Defendants, the testimony of witnesses in open Court, and argument of counsel, from all of which it appears unto the Court and the Court does find that in the latter part of the 1976-77 fiscal year, the Madison County Quarterly Court did appropriate the sum of $201,476.00, from funds received by Madison County under the Federal Revenue Sharing Statute of the Federal Government, into the Madison County School Fund for current operation and maintenance, and that such sum was knowingly not apportioned between the Madison County School System and the City of Jackson School System as required by Section 49-605 Tennessee Code Annotated; that the Madison County School System and the City of Jackson School System are the only two school systems being operated within Madison County, Tennessee; that the average daily attendance of the Madison County School System during the 1976-77 fiscal year was as follows: for the City of Jackson, 6,617 and for Madison County, 7,009, for a total school population average daily attendance of 13,626 in both systems; that broken down into percentages, the City of Jackson percentage for sharing under the provisions of Section 49-605 Tennessee Code Annotated is 48.561537% and the County's percentage share is 51.438427%; that the $201,476.00 appropriated to Madison County School System during the 1976-77 school year has been spent and is not available for apportionment; that a total appropriation of $391,683.82 would have been required for the County to receive an apportionment of $201,476.00 and for the City of Jackson to have received its proper proportion in percentage of $190,207.82; that by virtue of the failure to apportion as set forth above, the City of Jackson is entitled to a judgment in the sum of $190,207.82 against Madison County, Tennessee.

The Court further finds that the Madison County Quarterly Court has appropriated, from Federal Revenue Sharing Funds, $565,822.51 to the Madison County School fund for the 1977-78 year, such funds to be used for current operation and maintenance of the Madison County School System; that the $565,822.51 appropriated for the 1977-78 fiscal year made to the Madison County School System for current operation and maintenance has knowingly not been apportioned by the County Trustee as required by Section 49-605 Tennessee Code Annotated, and that the Defendants in this case openly state that they do not intend to make such apportionment as required by said code section; that the determination not to apportion in both instances was made by the Madison County Quarterly Court and such decision was communicated by the County Judge to the County Trustee.

The Court further finds that the relief sought by the Plaintiff should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED AS FOLLOWS:

1. It is the judgment of this Court, and it is hereby declared, that all funds, including funds derived from Federal Revenue Sharing grants, lawfully appropriated by the Madison County Quarterly Court for the current operation and maintenance of County Schools must be placed in one separate school fund and apportioned between the Madison County School System and the City of Jackson School System in accordance with the provisions of Section 49-605 Tennessee Code Annotated.

2. That the City of Jackson have and recover of Madison County, Tennessee a judgment in the amount of $190,207.82 in damages arising out of the failure to apportion the special appropriation of $201,476.00 made

by the Quarterly County Court to the County School Fund to cover a deficit in the current operation and maintenance fund for the 1976-77 school year, and the Madison County Quarterly Court is hereby ordered to levy in the next ensuing tax year upon all of the real property in Madison County, Tennessee such taxes as may be required to pay such judgment, or to otherwise provide for payment of same not later than the 31st day of December, 1978. The Plaintiff, or the City of Jackson, upon application will be granted the Writ of Mandamus and/or a Writ of Execution of the Court, if same be required.

3. That the Madison County Quarterly Court, the Madison County Trustee, and the Madison County Judge be directed and are hereby strictly and permanently enjoined, now and hereafter, to apportion with the City of Jackson School System all funds, including funds derived from Federal Revenue grants, appropriated to the Madison County School Fund for current operation and maintenance expenses as required by the provisions of Section 49-605 Tennessee Code Annotated. Upon application of the Plaintiff, or the City of Jackson, the writ of injunction and/or Writ of Mandamus of this Court may issue.

4. The temporary injunction heretofore issued in this cause is dissolved on the day this order becomes final and the bond principal and surety thereon discharged.

5. The Defendant Transamerica Insurance Company is dismissed in this cause and its cross-claim against Leon Johnsey and Madison County, Tennessee is likewise dismissed.

It appearing to the Court that the correct mathematical calculation of the apportionment due the City of Jackson School Department as a result of the failure to apportion the $201,476.00 appropriated by the Quarterly Court of

Madison County, Tennessee to the County School Fund for current operation and maintenance expense is $190,207.82, which is slightly different from the amount prayed for in the prayer of the Complaint, being $189,739.00. IT IS FURTHER ORDERED AND ADJUDGED that, upon application of Plaintiff:

6. The Complaint be amended on its face to conform to the proof by substituting $190,207.82 everywhere that the figure $189,739.00 appears.

The costs of this cause are adjudged against the Defendant Madison County, Tennessee, for all of which execution may issue.

ENTER:

/s/ Gene Walker
Circuit Judge

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE, ex rel
ROBERT CONGER, et al.,
Petitioners,

VS.

MADISON COUNTY, TENNESSEE, et al.,
Respondents.

IN THE COURT OF APPEALS OF
TENNESSEE, WESTERN SECTION
AT JACKSON

PETITION FOR CERTIORARI, ASSIGNMENT OF ERROR, BRIEF AND ARGUMENT ON BEHALF OF PETITIONERS

PREFACE

In this Brief the Petitioner is referred to throughout as "Jackson." References to the technical record are indicated by "R". References to the Bill of Exceptions are indicated by "T".

TO: THE HONORABLE JUDGES OF THE SUPREME COURT OF TENNESSEE:

Petitioners respectfully petition this Honorable Court for the issuance of its Writ of Certiorari to the Court of Appeals of Tennessee to the end that this cause may be brought into this Court for review, and in support of such petition, would show to the Court as follows:

I.

The Petitioners are much aggrieved by a Final Judgment entered in the above styled cause by the Court of Appeals on the 13th day of June, 1978, wherein the Court of Appeals reversed the Judgment of Honorable Gene Walker, Circuit Judge, and dismissed the action, dissolving all injunctions and other extraordinary writs.

II.

It is alleged and admitted by the Defendants that the Madison County Quarterly Court during the latter part of the 1976-1977 fiscal year made a supplemental appropriation to the County School System, for current operations and maintenance, the sum of $201,476.00; that the County Trustee did not apportion such appropriation between the County School System and the only Special School District within Madison County, which is the City of Jackson School System, all as required by Section 49-605 Tennessee Code Annotated; that such sum was promptly spent by the County School Department and is not now available for apportionment. It is further agreed that the sum was appropriated by the Quarterly County Court from revenue received by Madison County from a Federal Revenue Sharing grant.

It is further alleged and agreed by the Defendants that for the fiscal year 1977-1978 the Madison County Quarterly Court appropriated to the Madison County School System for current operations and maintenance a total sum of $1,293,910.23, of which sum $565,822.51 was appropriated from funds derived from a Federal Revenue Sharing grant; that that portion of the total appropriation derived from Federal Revenue Sharing funds was not apportioned by the County Trustee between the Madison County School System and the City of Jackson School

System, as required by Section 49-605 Tennessee Code Annotated. It is admitted by the Defendants that in each instance the action was deliberate and that the County Trustee does not intend to make an apportionment of the sums referred to.

The Trial Court awarded the Petitioner a Judgment against Madison County, Tennessee in the sum of $190,-207.82 for failure to apportion the supplemental appropriation in 1976-1977, granted Petitioner an injunction against Madison County, Tennessee, the County Judge of Madison County and the County Trustee of Madison County restraining and prohibiting violations of Section 49-605 Tennessee Code Annotated and requiring apportionment of all sums appropriated by Madison County to the County School System with the City of Jackson School System, including Federal Revenue Sharing funds. Since the Judgment was not rendered by the Trial Court against the County Trustee, the bonding company of the County Trustee was dismissed. The respondents appealed from the Judgment of the Trial Court and the Petitioners appealed the failure of the Trial Court to award the Judgment against the County Trustee and his bonding company, Transamerica Insurance Company, as well as against Madison County. Petitioner also appealed the dismissal of Transamerica Insurance Company.

The respondents took the position that Section 49-605 Tennessee Code Annotated did not apply to funds appropriated by the Madison County Quarterly Court to the County School System if such funds were received by Madison County under a Federal Revenue Sharing grant.

III.

The Court of Appeals, in its decision, agreed with the County that Section 49-605 Tennessee Code Annotated

did not apply to funds appropriated by the County from Federal Revenue Sharing grants and did so on the basis of the language of Section 49-605 Tennessee Code Annotated. In such Opinion the Court set forth the pertinent portions of Section 49-605 Tennessee Code Annotated, and underscored seven (7) words therein which the Court apparently relied upon in reaching its conclusions that the Section does not apply to funds appropriated by the Quarterly Court from a Federal Revenue Sharing grant. Other than such underscoring the Court offers no explanation or reasons for its conclusion. The reader is free to surmise at will as to the intent of the Court of Appeals. It is the position of the Petitioners that the Court of Appeals' interpretation of the language appearing in Section 49-605 Tennessee Code Annotated is erroneous.

IV.

An analysis of the decision of the Court of Appeals requires the reader to seek to determine the significance the Court of Appeals placed upon the underscored words, which, of course, is an uncertain approach at the best. The Petitioner, however, believes that the underscoring of the words, "state, county, and other political subdivisions" was intended to indicate the belief of the Court of Appeals that these words created a limitation upon the subject matter of the sentence, which is, "all school revenues", and further, the apparent belief of the Court of Appeals that, since Madison County, Tennessee appropriated the school revenue from funds derived by Madison County from a Federal Revenue Sharing grant, such appropriation did not constitute "received from the state, county, and other political subdivision, if any". If this assumption is correct, Petitioner submits that the Court of Appeals has simply overlooked the total meaning of the sentence. The significant words overlooked by the Court of Appeals

are contained in the phrase, "Each *system* shall place in one separate school fund all school revenues. . . ." *This sentence is referring to the source of money coming to the system* and it is admitted that the Madison County *School System* received its revenue *from Madison County.* This sentence is directing the school system what to do with revenues received from Madison County. "Hereinafter in this title . . . the term school system . . . shall mean . . . any county school system. . . ." Tennessee Code Annotated Sec. 49-102.

Webster's New World Dictionary devotes considerable attention to the word "all". It is defined as an adjective meaning "the whole quantity", "every one of", "the greatest possible", "any"; "any whatever". Further, it discusses the word "all" in its "combining form meaning", and says that it means "wholly, entirely, for every, as in all-purpose, and of every part, as in all-inclusive."

While it may seem elementary to have to revert to the dictionary for a definition of the word "all", it is necessary to do so in order to test the conclusion of the Court of Appeals. When the meaning of "*all* school revenues" is revealed, the only conclusion, therefore, that can be drawn from the Opinion of the Court of Appeals is that it is using the underscored terms in a restrictive sense. A reading of this Code Section in its entirety reveals it simply cannot be the intent of this Section. The true intent is that the school system will place all school revenues in one separate school fund and the additional language is not a limitation but an effort to expand the meaning of "all" to include from any source whatever. The extra language is redundant. It is probable that this language was intended to make it clear that the Legislature was not just talking about the one school tax referred to in the sentence just preceding the sentence in question.

The next sentence, which the Court of Appeals has singled out, is the one which reads,

> "all school funds for current operation and maintenance purposes *collected* by any county . . . be apportioned, etc."

While the Court does not say so in its decision, the only inference that Petitioners can draw from the underscoring of the word, "collected" is that it considers this to be a restrictive word to be applied against the phrase, "all school revenues." Once again, turning to Webster's New World Dictionary as to the word "collect", we find that it is defined as "to gather together; example, to call for and receive payment for"; "to gather, assemble, to accumulate, to collect payments." The only interpretation of this word which will support the Opinion of the Court of Appeals is that the Legislature intended only to apportion those items for which the County has its own collector. If this interpretation can be said to be right, then the holding of the Supreme Court in *Harriman v. Roane County, supra,* which deals in part with the second half sales tax, would have to be wrong, as the sales tax is not "collected" by Madison County in the sense that the Court of appeals seems to imply. The County *receives* the sales tax, which is clearly within Webster's definition of "collect", but it does not have its own collector.

V.

It is the belief of the Petitioner that the decision of the Court of Appeals is erroneous for the reasons above stated and that such decision, if allowed to stand, will deprive Special School Districts across the State of Tennessee of countless millions of dollars to which they are lawfully entitled under the provisions of Section 49-605 Tennessee Code Annotated; that it will grant to those

counties in which there is located a Special School District a windfall of the countless millions lost by the Special School Districts. The further effect of the Court of Appeals' decision will be to alter the intent and purpose of Section 49-605 Tennessee Code Annotated, which enactment had the purpose of compensating Special School Districts for taking over a part of the responsibility placed upon the County by Section 49-102 Tennessee Code Annotated to administer a school system in the County. It, further, will alter the provisions of Section 49-605 Tennessee Code Annotated and Section 49-206 Tennessee Code Annotated, which defines the duties of the County Trustee in connection with apportionment between County Systems and Special School Systems within the County. It may be worth noting that the duty of apportionment placed upon a County Trustee is of sufficient importance that the Legislature has declared a failure of the County Trustee to comply with Section 49-206 Tennessee Code Annotated would be a misdemeanor (Section 49-207 Tennessee Code Annotated).

In this case, for both fiscal years the Madison County Quarterly Court itself complied with the provisions of Section 49-605 Tennessee Code Annotated in that it appropriated funds to the County School System. This is the extent of the County Court's authority. The County Court has nothing at all to do with apportionment, this being a ministerial act demanded of the County Trustee as to which the County Trustee has no discretion whatever. It is admitted that County officials, including the County Judge and the Quarterly County Court, prevailed upon the County Trustee not to make the apportionment demanded by Section 49-605 Tennessee Code Annotated as to those funds appropriated to the County School System from Federal Revenue grants.

VI.

The above is more fully argued and set out in the Assignments of Error, Brief and Argument, which are attached hereto and made a part hereof. This is a case of extreme importance to the Special School Districts across the State of Tennessee.

WHEREFORE, PREMISES CONSIDERED, PETITIONERS PRAY that the Writ of Certiorari be issued by this Court to the Court of Appeals directing that the record in this cause be brought before it for review, to the end that (1) the Judgment of the Court of Appeals may be reversed; (2) the Judgment of the Trial Court reinstated; (3) the action of the Trial Court in dismissing Transamerica Insurance Company, the bonding company of the Trustee, be reversed; and (4) a judgment in the sum of $190,207.82 be entered in this Court against Leon Johnsey, Trustee of Madison County and his bonding company, Transamerica Insurance Company. Petitioners also PRAY for such further and general relief as they may be entitled to receive.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI.

Sidney W. Spragins
Rice & Rice
By /s/ Russell Rice
Attorneys for Petitioners
Third Floor Fox Building
Jackson, Tennessee 38301

STATE OF TENNESSEE
COUNTY OF MADISON

RUSSELL RICE, SR., being duly sworn, makes oath that he is one of the attorneys for the Petitioners and that the allegations of the foregoing Petition are true and correct, and that in his opinion the Petitioners are justly entitled to the relief sought.

This 15th day of June, 1978.

/s/ Russell Rice, Sr.
Russell Rice, Sr.

SWORN TO AND SUBSCRIBED before me, this 15th day of June, 1978.

/s/ (Illegible)
Notary Public

My Commission expires: Sept. 17, 1978.

NOTICE OF INTENTION TO APPLY FOR WRIT OF CERTIORARI

To the Honorable Hewitt Tomlin, Attorney for Madison County, Tennessee, Honorable Walter Baker Harris, County Judge, and Leon Johnsey, County Trustee, and to Honorable Jack Manhein, Jr., Attorney for Transamerica Insurance Company:

You and each of you are hereby notified that a Petition for a Writ of Certiorari in the above styled matter will be filed with the Clerk of the Supreme Court of the State of Tennessee on June 15, 1978.

This 7th day of June, 1978.

Rice & Rice

By /s/ Russell Rice

Third Floor, Fox Building,
Jackson, Tennessee 38301
Attorney for Petitioners

ASSIGNMENTS OF ERROR

The Court of Appeals erred in the following respects:

I.

The Court erred in holding that TCA Sec. 49-605 has no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended.

II.

The Court erred in holding "Madison County has placed in its Educational Budget all revenue sharing funds it received from the Federal Government. The only issue before the Court is whether Madison County must apportion that money with the City of Jackson on the basis of the average daily attendance of pupils in their respective school systems. Our answer is 'No'."

III.

The Court erred in reversing the Trial Court and in dismissing the action, dissolving injunctions and extraordinary writs issued by the Trial Court.

IV.

The Court erred in failing to sustain the action of the Trial Court.

V.

The Court erred in failing to sustain Petitioner's Assignment of Error No. 1, which assignment is as follows:

> "The Court erred in failing to award Jackson a judgment against Leon Johnsey, Trustee of Madison County, and his bonding company, Transamerica In-

surance Company, in the sum of $190,207.82, said Trustee being the County officer upon whom responsibility for apportioning school fund appropriations is placed by Section 49-605 Tennessee Code Annotated."

VI.

The Court erred in failing to sustain Petitioner's Assignment of Error No. II, which assignment is as follows:

"The Court erred in dismissing the Defendant Transamerica Insurance Company."

VII.

The Court erred in that its decision gives to funds derived from Federal Revenue Sharing grants a special protection not applicable to other funds appropriated by Madison County, Tennessee, which special classification is contrary to the specific provisions of Title 31, Sec. 1243(4) U.S.C.A. (Federal Revenue Sharing Law) which specifically provides that local governments:

(4)1. . . . it will provide for the expenditure of amounts received under sub-chapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenue;"

STATEMENT OF THE CASE

This is an action brought by the School Board of the City of Jackson as relators against Madison County, Tennessee, County Judge Walter Baker Harris and Honorable Leon Johnsey, County Trustee, and his bonding company, Transamerica Insurance Company. (R. pg. 1-9) The Plaintiff seeks a money judgment against the Defendants for failure to apportion a special appropriation made by the Madison County Quarterly Court to the County School System, for operational and maintenance purposes, in the latter part of the fiscal year 1976-77; seeks a writ of mandamus to compel Madison County to pay such judgment by levying whatever tax might be required; seeks an injunction against the Defendants prohibiting them from spending or using in any way funds appropriated by the Madison County Quarterly Court to the County School System for operational and maintenance purposes, for the fiscal year 1977-78 unless such money be apportioned with the Jackson City Schools, as required by Section 49-605 Tennessee Code Annotated, (T. pg. 1-8); and seeks a writ of mandamus to compel the County Trustee to perform the ministerial act of apportionment as commanded by Section 49-605 Tennessee Code Annotated. A preliminary injunction was issued by the Madison County Circuit Court restraining Defendants from expending any appropriation made to the County School Fund unless and until same was apportioned with the Jackson School System. (P. p. 18)

The Defendants admit practically everything alleged and their defense is solely that Federal Revenue Sharing grants received by the County, and subsequently appropriated to the Madison County School System is not required to be apportioned by Section 49-605 Tennessee Code Annotated. (R. pg. 20-23) The Trial Court in its Judgment (R. pg. 54-57) found as a fact that in the latter part

of the 1976-77 fiscal year the Madison County Quarterly Court appropriated the sum of $201,476 to the Madison County School System, which funds were appropriated from a Federal Revenue Sharing grant, to be used for current operation and maintenance; that such sum was knowingly not apportioned by the County Trustee between the Madison County School System and the City of Jackson School System as required by Section 49-605 Tennessee Code Annotated; that the a/d/a between the Madison County School System and the City of Jackson School System is 51.438427% and 48.561537%, respectively; that a proper apportionment to the City based on an apportionment to the County of $201,476 would have been $190,207.82 by virtue of which the Court did then grant a Judgment to the City of Jackson School Department against Madison County, Tennessee in the sum of $190,207.82.

The Court further found as a fact that the Madison County Quarterly Court appropriated from Federal Revenue Funds to the Madison County School System for the 1977-78 year the sum of $565,822.51, which funds were to used for current operation and maintenance; that the County Trustee did not apportion such sum with the City of Jackson School System and indicated that he did not intend to apportion such sum with the City of Jackson. Whereupon, the Court did enter its finding that all funds appropriated by Madison County, for current operation and maintenance, to the County School System, including Federal Revenue Sharing Funds, must be apportioned by the County Trustee between the Madison County School System and the City of Jackson School System in accordance with Section 49-605 Tennessee Code Annotated. The Court further granted the Plaintiff its Writ of Mandamus to require Madison County to pay the money Judgment heretofore granted; and further granted to Plaintiff a Writ of Mandamus to compel the Madison County Trustee Leon

Johnsey to perform the ministerial act of apportionment of the sum of $565,822.51 in his hands as part of the 1977-78 appropriation to County Schools. The Court further enjoined the Madison County Quarterly Court, the Madison County Trustee and the Madison County Judge to apportion now and hereafter with the City of Jackson School System all funds, including funds derived from Federal Revenue grants appropriated to the Madison County School System for current operation and maintenance expenses, as required by Section 49-605 Tennessee Code Annotated.

The Court, thereupon, dismissed the Defendant Transamerica Insurance Company.

The Defendants appealed and the Plaintiffs, thereupon, appealed. (R. pg. 62)

This case was argued before the Court of Appeals, West Tennessee Section, which Court three (3) hours later issued its Opinion to the effect that Madison County was under no obligation to apportion with the City of Jackson funds derived from Federal Revenue Sharing funds, and, further, that Tennessee Code Annotated 49-605 had no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended. The Court, thereupon, reversed the Judgment of the Trial Court and dismissed the lawsuit.

STATEMENT OF FACT

Stipulation between the parties. (T. pg. 7)

"The first stipulation by the parties is that in meeting the 1976-77 budget, Madison County appropriated $201,476.00 of revenue sharing funds to the Madison County 'General Purpose School Fund' for maintenance and operating purposes. They appropriated this $201,476.00 which was received by the County after

January 1, 1977. That appropriation was to the Madison County 'General Purpose School Fund' for maintenance and operating purposes, and that such appropriation was not apportioned with the City of Jackson.'

The second stipulation is that this document, which was marked as Exhibit 1 at the hearing on preliminary injunction, is a true copy of what it purports to be, and that is: 'The Budget', 'The Appropriation Resolution', and 'The Tax Levy Resolution' of Madison County for the fiscal year July 1, 1977, to June 30, 1978.

We submit that this copy of the budget ought to be marked as Trial Exhibit #2 and will offer it at this time.

THE COURT: All right; let it be so marked.

(Accordingly, said booklet entitled, 'The Budget, The Appropriation Resolution, The Tax Levy Resolution of Madison County, Tennessee, was filed and marked as Plaintiff's Exhibit #2 and will be found attached hereto.)

MR. SPRAGINS: (Reading) 'The third stipulation is that Madison County does not intend to apportion with the City of Jackson, $565,862.51 of expected revenue sharing funds which have been apportioned by the County to the Madison County 'General Purpose School Fund' for maintenance and operating purposes.'

And the fourth stipulation is that the revenue sharing funds that the County expects to receive, and which it has appropriated and does not intend to apportion, will be received by the County in increments in early October, 1977, early January, 1978, and early April, 1978, and early July, 1978."

County School Superintendent James Walker testified that in 1976-77 average daily attendance in the City schools was 6,617 and the average daily attendance in the Madison County Schools was 7,009, which a simple mathematical computation will indicate is a percentage of 48.561537% for the City and 51.438427% for the County; that on July 7, 1977 the County Trustee, Leon Johnsey, was advised by letter from Superintendent Walker to make apportionment, using these figures (Ex. #3, T. pg. 23); that Madison County Quarterly Court made a supplemental appropriation to the Madison County School System in June, 1977 in the amount of $201,476.00, and that the money has been spent. (T. pg. 22, Q. 11, 12, 13)

Mr. Thomas David McAnulty, an employee of the University of Tennessee County Technical Systems Service for about three (3) years, testified that the action of the County in appropriating Federal Revenue Sharing Funds to the County School Fund, without apportionment, originated with his Department (T. pg. 142, Q. 1, 2) and testified at length on why he believes the provisions of the General Education Act of Tennessee should be changed in line with his philosophy. (T. pg. 74-151)

During the last part of the fiscal year 1976-77 the Madison County Quarterly Court made a supplemental appropriation of $201,476.00 to the Madison County School System to cover an operational deficit, such sum being appropriated from a grant received under the Federal Revenue Sharing Law. (T. pg. 3, Stip. 1; T. pg. 5) This supplemental appropriation was not apportioned with the Jackson School System, as required by Section 49-605 Tennessee Code Annotated. (T. pg. 5) The money was immediately spent. (T. pg. 22, Q. 11, 12, 13; T. pg. 23, Ex. #3) The explanation of Madison County for the failure to apportion with Jackson School System on an average

daily attendance basis was that the money was a Federal Revenue Sharing grant; that Jackson had also received a Federal Sharing grant; that, therefore, the money had already been apportioned and Section 49-605 Tennessee Code Annotated did not apply. (R. pg. 3, para. VIII; R. pg. 50; T. pg. 74-141) The money having been spent without apportionment, there is nothing now to apportion. The correct a/d/a division between Madison County and and Jackson School Systems was shown to be 48.561537% to Jackson and 51.438427% to the County. (T. pg. 20, Q. 3) In order to provide the County with a properly apportioned sum of $201,476.00, an appropriation of $391,-683.82 would have been necessary and Jackson's share thereof by proper apportionment would be $190,207.82.

In adopting the 1977-78 school budget, the Madison County Quarterly Court appropriated $565,822.51 from a Federal Revenue Sharing grant to the Madison County School System and advised that such sum had not been and would not be apportioned with Jackson School System on an average daily attendance basis, as required by Section 49-605 Tennessee Code Annotated, as said money was derived from Federal Revenue grants. (T. pg. 4, Stip. 3; T. pg. 5)

Jackson obtained an injunction against the Madison County Quarterly Court, the Madison County Trustee, and the Madison County Judge restraining them from any expenditure of the $565,822.51 without first apportioning same with Jackson's School System. This injunction was dissolved by the Court of Appeals but since this Petition for Certiorari has been filed presumably remains in effect and, therefore, this sum is available for apportioning in the event this Court upholds the Madison County Circuit Court. (R. pg. 57, para. 4)

PROPOSITIONS OF LAW

I.

Where the County Trustee fails to apportion between a County School System and a Special School District within the county, as required by Section 49-605 Tennessee Code Annotated, funds appropriated by the County Court to the County School Syster for current operation and maintenance, the County Trustee and his bonding company are liable in damages to the Special School District for the failure to so apportion.

II.

Where a Quarterly County Court appropriates to the County School System, for current operation and maintenance, funds derived from a Federal Revenue Sharing grant, such funds are subject to the apportionment provision of Section 49-605 Tennessee Code Annotated.

III.

The apportionment demanded of the County Trustee by Section 49-605 Tennessee Code Annotated is a ministerial duty as to which the County Trustee has no discretion whatever.

IV.

The apportionment demanded of the County Trustee by Section 49-605 Tennessee Code Annotated is a ministerial duty of the County Trustee, not subject to the control or discretion of the County Judge or of the County Court of such county.

ARGUMENT

In Petitioners' opinion this is a very uncomplicated legal question. The pertinent facts have been stipulated, or established by uncontradicted proof, that in the latter part of the 1976-77 fiscal year, in order to meet a deficit in the Madison County School Department, the Madison County Quarterly Court appropriated from Federal Revenue Sharing funds to the Madison County School System for current operation and maintenance, the sum of $201,476.00; that the County Trustee did not apportion same with the Jackson School System, a special school district within the county, but, instead, the entire $201,476.00 was promptly spent by the Madison County School Department; that the appropriate average daily attendance division between the Madison County School System and the Jackson School System is 51.438427% for the county and 48.561537% for Jackson; that a simple mathematical computation reveals that the required appropriation to have rendered to the county an apportionment of $201,476.00 would have been $391,683.82, of which the proper apportionment to the Jackson School System would have been $190,207.82; that of the appropriated $201,476.00, all has been expended by the county, and there is nothing to apportion remaining in the hands of the County Trustee.

That in making up the budget for the 1977-78 school year, the Madison County Quarterly Court appropriated from Federal Revenue Sharing funds to the Madison County School System for current operation and maintenance the sum of $565,822.51; the County Trustee stated at the time that said fund had not been apportioned with the Jackson School System as required by Section 49-605 Tennessee Code Annotated and that it was the intention of the county then, and still is, not to make such apportionment.

Based on the above facts, the question, very simply, is - Does Section 49-605 Tennessee Code Annotated require that all funds appropriated by the County Court to the County School System for current operation and maintenance, including funds derived by the County from Federal Revenue Sharing Funds granted to the county, be apportioned on average daily attendance basis between the County School System and the separate school district within the county, in this case, being the Jackson City School System only?

The Court of Appeals, in its decision, agreed with the County that Section 49-605 Tennessee Code Annotated did not apply to funds appropriated by the County from Federal Revenue Sharing grants and did so on the basis of the language of Section 49-605 Tennessee Code Annotated. In such Opinion the Court set forth the pertinent portions of Section 49-605 Tennessee Code Annotated, and underscored seven (7) words therein which the Court apparently relied upon in reaching its conclusions that the Section does not apply to funds appropriated by the Quarterly Court from a Federal Revenue Sharing grant. Other than such underscoring the Court offers no explanation or reasons for its conclusion. The reader is free to surmise at will as to the intent of the Court of Appeals. It is the position of the Petitioners that the Court of Appeals' interpretation of the language appearing in Section 49-605 Tennessee Code Annotated is erroneous.

An analysis of the decision of the Court of Appeals requires the reader to seek to determine the significance the Court of Appeals placed upon the underscored words, which, of course, is an uncertain approach at the best. The Petitioner, however, believes that the underscoring of the words, "state, county, and other political subdivisions" was intended to indicate the belief of the Court

of Appeals that these words created a limitation upon the subject matter of the sentence, which is, "all school revenues", and further, the apparent belief of the Court of Appeals that, since Madison County, Tennessee appropriated the school revenue from funds derived by Madison County from a Federal Revenue Sharing grant, such appropriation did not constitute "received from the state, county, and other political subdivision, if any". If this assumpation is correct, Petitioner submits that the Court of Appeals has simply overlooked the total meaning of the sentence. The significant words overlooked by the Court of Appeals are contained in the phrase, "Each *system* shall place in one separate school fund all school revenues. . . ." *This sentence is referring to the source of money coming to the system* and it is admitted that the Madison County *School System* received its revenue *from Madison County.* This sentence has no reference at all to the source from which Madison County obtained the funds and is directing the school system as to what it should do with revenues received from Madison County. See second paragraph in Sec. 49-102 T.C.A.

Webster's New World Dictionary devotes considerable attention to the word "all". It is defined as an adjective meaning "the whole quantity", "every one of", "the greatest possible", "any"; "any whatever". Further, it discusses the word "all" in its "combining form meaning", and says that it means "wholly, entirely, for every, as in all-purpose, and of every part, as in all-inclusive."

While it may seem elementary to have to revert to the dictionary for a definition of the word "all", it is necessary to do so in order to test the conclusion of the Court of Appeals. When the meaning of "*all* school revenues" is revealed, the only conclusion, therefore, that can be drawn from the Opinion of the Court of Appeals is

that it is using the underscored terms in a restrictive sense. A reading of this Code Section in its entirety reveals it simply cannot be the intent of this Section. The true intent is that the school system will place all school revenues in one separate school fund and the additional language is not a limitation but an effort to expand the meaning of "all" to include from any source whatever. The extra language is redundant. It is probable that this language was intended to make it clear that the Legislature was not just talking about the one school tax referred to in the sentence just preceding the sentence in question.

The next sentence, which the Court of Appeals has singled out, is the one which reads,

> "all school funds for current operation and maintenance purposes *collected* by any county . . . be apportioned, etc."

While the Court does not say so in its decision, the only inference that Petitioners can draw from the underscoring of the word, "collected" is that it considers this to be a restrictive word to be applied against the phrase, "all school revenues." Once again, turning to Webster's New World Dictionary as to the word "collect", we find that it is defined as "to gather together; example, to call for and receive payment for"; "to gather, assemble, to accumulate, to collect payments." The only interpretation of this word which will support the Opinion of the Court of Appeals is that the Legislature intended only to apportion those items for which the County has its own collector. If this interpretation can be said to be right, then the holding of the Supreme Court in *Harriman v. Roane County, supra,* which deals in part with the second half sales tax, would have to be wrong, as the sales tax is not "collected" by Madison County in the sense that the

Court of Appeals seems to imply. The County *receives* the sales tax, which is clearly within Webster's definition of "collect", but it does not have its own collector.

It is the belief of the Petitioner that the decision of the Court of Appeals is erroneous for the reasons above stated and that such decision, if allowed to stand, will deprive Special School Districts across the State of Tennessee of countless millions of dollars to which they are lawfully entitled under the provisions of Section 49-605 Tennessee Code Annotated; that it will grant to those counties in which there is located a Special School District a windfall of the countless millions lost by the Special School Districts. The further effect of the Court of Appeals' decision will be to alter the intent and purpose of Section 49-605 Tennessee Code Annotated, which enactment had the purpose of compensating Special School Districts for taking over a part of the responsibility placed upon the County by Section 49-102 Tennessee Code Annotated to administer a school system in the County. It, further, will alter the provisions of Section 49-605 Tennessee Code Annotated and Section 49-206 Tennessee Code Annotated, which defines the duties of the County Trustee in connection with apportionment between County Systems and Special School Systems within the County. It may be worth noting that the duty of apportionment placed upon a County Trustee is of sufficient importance that the Legislature has declared a failure of the County Trustee to comply with Section 49-206 Tennessee Code Annotated would be a misdemeanor (Section 49-207 Tennessee Code Annotated).

In this case, for both fiscal years the Madison County Quarterly Court itself complied with the provisions of Section 49-605 Tennessee Code Annotated in that it appropriated funds to the County School System. This is the

extent of the County Court's authority. The County Court has nothing at all to do with apportionment, this being a ministerial act demanded of the County Trustee as to which the County Trustee has no discretion whatever. It is admitted that County officials, including the County Judge and the Quarterly County Court, prevailed upon the County Trustee not to make the apportionment demanded by Section 49-605 Tennessee Code Annotated as to those funds appropriated to the County School System from Federal Revenue grants.

In support of its position that such monies must be apportioned as required by Section 49-605 Tennessee Code Annotated, Jackson takes its stand squarely upon the terms of such section and the decision of this Court in the case of *City of Harriman, et al. v. Roane County, Tennessee, et al.*, 553 SW(2d) 904. It is the position of Jackson and of the Trial Court that there is no difference whatever between funds derived by the county from the second one-half of the Tennessee sales tax, as in the *Harriman case*, and funds derived by the county from a Federal Revenue Sharing grant as in this case.

Section 67-3052 (2) (a) Tennessee Code Annotated authorizes a county to allocate the remainder of county sales tax receipts (the second one-half) to "such fund or funds of the county" as it shall direct. In the *Harriman case*, the Quarterly Court allocated the remaining portion (second one-half) of the county's share of retail sales tax proceeds to the school fund, to be used in meeting the annual budget of the county schools.

In this case, the county government is authorized by Title 31, Section 1243 (4) United States Code Annotated (Federal Revenue Sharing Law) to use Federal Revenue Sharing funds as follows:

> "(4)1 . . . It will provide for the expenditure of amounts received under Sub-Chapter I of this Chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues;"

Pursuant to this grant of authority, the Quarterly Court appropriated Federal Revenue Sharing Funds to its school system, first in 1976-77 to meet a deficit in the current operating and maintenance budget of the school system. The money was not apportioned but was spent by the County School Department. Secondly, in the 1977-78 school budget, the Quarterly Court appropriated Federal Revenue Sharing funds to the County School System for current operating and maintenance purposes. The County Trustee did not apportion same with the Jackson School System and expressly stated that he did not intend to do so. The Trial Court enjoined the expenditure of such school fund until apportioned.

Jackson believes the holdings in the *Harriman case* apply here and specifically the following:

> "While the Quarterly County Court is certainly not obligated to allocate these receipts to a current school budget, when it does so, we are of the opinion that special school districts within the county are entitled to a proportionate part under Tennessee Code Annotated, Section 49-605."

and further:

> "Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as had been done here with the portion of sales taxes at issue, then those funds become subject to the apportionment provisions of the General School Statutes."

Jackson simply does not find a point of debate on the above position. The second half sales tax money is available to the county for any purpose, and so is Federal Revenue Sharing money. The County Court did not have to appropriate second half sales tax money to the school fund for operating purposes, but elected to do so. In this case the County Court did not have to appropriate Federal Revenue Sharing money to the County School System for operating purposes, but elected to do so. Therefore, by its own action as to both the second half sales tax money and the Federal Revenue Sharing money, it put these funds within the meaning and scope of Section 49-605 Tennessee Code Annotated. We believe that the law as interpreted in the *Harriman case* and in *Board of Education of Memphis, etc. v. Shelby County,* 207 Tenn. 307, 339 S.W.(2) 569 is precisely applicable to the current dispute between Jackson and Madison County, Tennessee.

Jackson believes further that the direct point of responsibility for making lawful apportionment is placed upon the County Trustee, Leon Johnsey, by Section 49-605 Tennessee Code Annotated. While it is understandable that a County Trustee may feel compelled to go along with the County Court, a County Trustee in no way is subservient to such Court. The office of County Trustee is established by Article VII, Section 1 of the Constitution of Tennessee, and is an entirely independent office with independent responsibilities. The money judgment should have been awarded against the County Trustee and his bonding company, Transamerica Insurance Company, as well as against the County itself. The Defendant, Transamerica Insurance Company, therefore, should not have been dismissed by the Trial Court. The payment of moneys to persons authorized by law to receive them is specifically a bonded obligation under the terms of the

Trustee's bond with Transamerica Insurance Company. Exhibit "A" to Complaint (R-10).

RELIEF SOUGHT

The relief sought is as follows:

1. Petitioners' Assignments of Error Nos. I through VII sustained.

2. The Judgment of the Court of Appeals reversed.

3. The Judgment of the Trial Court reinstated, as modified by the granting of Petitioners' Assignment of Error No. V and No. VI.

4. A Judgment be entered in this Court in favor of the Petitioners and against Leon Johnsey, County Trustee, and his bonding company, Transamerica Insurance Company.

5. That the injunctions heretofore granted by the Trial Court commanding Madison County, Tennessee, the Madison County Quarterly Court and the Madison County Trustee to apportion with The City of Jackson School System all revenue, including Federal Revenue Sharing Funds, appropriated by the Madison County Quarterly Court to the Madison County School System for current operation and maintenance be made permanent by order of this Court, or, if necessary, a new injunction to this effect issued by this Court.

6. That the Writ of Mandamus issue by order of this Court Commanding the County Trustee Leon Johnsey to apportion with The City of Jackson School System the $565,822.51 appropriated from Federal Revenue Sharing Funds to the Madison County School System for the 1977-78 school year.

7. That this cause be referred back to the Circuit Court of Madison County for enforcement as necessary.

Respectfully submitted,

Sidney W. Spragins
Rice & Rice

By /s/ Russell Rice
Attorneys for Petitioners
Third Floor Fox Building
Jackson, Tennessee 38301

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petition, Assignment and Brief have this day been mailed by regular United States mail to Honorable Hewitt Tomlin, Attorney for Madison County, Tennessee, County Judge Walter Baker Harris and County Trustee Leon Johnsey, 106 South Liberty Street, Jackson, Tennessee 38301 and to Honorable Jack Manhein, Jr., Attorney for Transamerica Insurance Company, First National Bank Building, Jackson, Tennessee 38301.

This 15th day of June, 1978.

/s/ Russell Rice Sr.
Russell Rice, Sr.

Supreme Court, U. S.
FILED
SEP 14 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-196

THE STATE OF TENNESSEE, EX REL., ROBERT CONGER, BEN LANGFORD AND JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System,
Petitioners,

v.

MADISON COUNTY, TENNESSEE, a political subdivision of the State of Tennessee; WALTER BAKER HARRIS, County Judge of Madison County, Tennessee; LEON JOHNSEY, *Trustee* of Madison County, Tennessee; and TRANSAMERICA INSURANCE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Tennessee

BRIEF AMICUS CURIAE ON BEHALF OF THE TENNESSEE MUNICIPAL LEAGUE URGING THE GRANTING OF THE WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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INDEX

Page

Interest of Amicus Curiae 1

Argument:

The Tennessee Supreme Court Disregarded the Federal Mandate Set Forth in the Federal Revenue Sharing Act That a State or Local Government Is to Provide for the Expenditure of Federal Revenue Sharing Funds Only in Acordance With the Laws and Procedures Applicable to the Expenditure of Its Own Revenues, Therefore, This Court Should Issue a Writ of Certiorari to Review the Tennessee Supreme Court's Decision 4

A. The Federal Revenue Sharing Act in 31 U.S.C.A. §1243 (a)(4), provides for federal control in the expenditure of Federal Revenue Sharing Funds by a state or local government, therefore, this mandate must be followed or a direct violation of the Act will occur 4

B. The Tennessee Supreme Court disregarded the federal mandate set forth in 31 U.S.C.A. §1243 (a)(4) of the Federal Revenue Sharing Act for the expenditure of Federal Revenue Sharing Funds by a state or local government, therefore, its decision is in direct conflict with the Act 6

Conclusion 9

Authorities

Cases:

Carolina Action v. Simon, 389 F. Supp. 1244 (M.D.N.C. 1975) 5

Statutes:

Federal Statutes:

31 U.S.C.A. §§1221, et seq. (1976 and Supp. 1979) 4

31 U.S.C.A. §1243 (1976 and Supp. 1979) 4

31 U.S.C.A. §1243 (a)(4) (1976) 2, 5, 6, 7, 8

Tennessee Statutes:

Tenn. Code Ann. §49-605 (1977) 2, 3, 5, 6, 7, 8, 9

Other Authorities:

1972 U.S. Code Cong. & Ad. News 3874 4

IN THE

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THE STATE OF TENNESSEE, EX REL., ROBERT CONGER, BEN LANGFORD AND JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System,
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INTEREST OF AMICUS CURIAE

This brief *amicus curiae* is submitted on behalf of the Tennessee Municipal League with the written consent of all parties to this litigation, given in letters which have been filed with the Clerk of this Court.

The Tennessee Municipal League is a public association representing approximately 280 incorporated municipalities throughout the State of Tennessee. One of its primary purposes is to safeguard the interests, rights and privileges of those member municipalities as they may be affected by state and federal legislation. Many of the member municipalities of the Tennessee Municipal League have much the same characteristics as the Petitioners in that they also operate a city school system or a special school system within the boundaries of their respective county. In addition, those particular member municipalities operating a city school system or a special school system within their boundaries depend upon the respective county school fund and its pro rata division in accordance with Tenn. Code Ann. § 49-605 (1977) (current version at Tenn. Code Ann. § 49-614 (Supp. 1978)), for a portion of the required operating funds needed each year which, until the decision rendered by the Tennessee Supreme Court in this case, included Federal Revenue Sharing Funds. Because of the magnitude of the decision by the Tennessee Supreme Court by its interpretation and construction of the statutory procedure established by 31 U.S.C.A. § 1243 (a)(4) (1976), for the expenditure of Federal Revenue Sharing Funds by states and local governments, and the impact of this decision upon the member municipalities of the Tennessee Municipal League, the Tennessee Municipal League is vitally interested in the final determination of this litigation. The impact of the decision of the Tennessee Supreme Court, if it is upheld, would be the potential loss of Federal Revenue Sharing Funds by other city and special school systems that are operated by the member municipalities of the Tennessee Municipal League. The City of Jackson alone for the 1976-77 fiscal year suffered a loss of $190,207.82 and for the 1977-78 fiscal year suffered a loss of $543,214.88 by the refusal of the county trustee to apportion the Federal Revenue Sharing Funds appropriated to the county school fund in accordance with Tenn. Code Ann. § 49-605. This is a continuing loss.

It is in order to protect the interests and rights of the member municipalities that the Tennessee Municipal League is filing this brief as *amicus curiae* in support of the petition for a Writ of Certiorari to the Supreme Court of the State of Tennessee to review the construction and interpretation by that court of 31 U.S.C.A. § 1243 (a)(4) for the expenditure of Federal Revenue Sharing Funds by states and local governments.

ARGUMENT

The Tennessee Supreme Court Disregarded the Federal Mandate Set Forth in the Federal Revenue Sharing Act That a State or Local Government Is to Provide for the Expenditure of Feedral Revenue Sharing Funds Only in Accordance With the Laws and Procedures Applicable to the Expenditure of Its Own Revenues, Therefore, This Court Should Issue a Writ of Certiorari to Review the Tennessee Supreme Court's Decision.

The controversy presented to this Court by means of a petition for a Writ of Certiorari to the Supreme Court of the State of Tennessee concerns the construction and application of a provision of the State and Local Fiscal Assistance Act of 1972 (Federal Revenue Sharing Act) 31 U.S.C.A. §§ 1221, *et seq.* (1976 & Supp. 1979), dealing with the expenditure of Federal Revenue Sharing Funds by states and local governments. The Tennessee Supreme Court construed the applicable provision of the Act, 31 U.S.C.A. § 1243, erroneously and rendered a decision that is in conflict with the mandates of the Act. It is for this reason that the Tennessee Municipal League respectfully requests, as *amicus curiae*, that this Court issue a Writ of Certiorari to the Supreme Court of the State of Tennessee to review its decision and make a definitive interpretation of the meaning and application of the federal statute involved in this controversy.

A. The Federal Revenue Sharing Act in 31 U.S.C.A. § 1243 (a)(4), provides for federal control in the expenditure of Federal Revenue Sharing Funds by a state or local government, therefore, this mandate must be followed or a direct violation of the Act will occur.

The Federal Revenue Sharing Act was enacted with the primary intent and objective of returning to states and local govern-

ments revenues collected by the federal government for use "according to their own perceived demands and objectives and not those of the federal government." *Carolina Action v. Simon*, 389 F. Supp. 1244, 1248 (M.D.N.C. 1975). This concept has commonly been referred to as a "no federal strings attached" approach to federal assistance. 1972 U.S. Code Cong. & Ad. News 3874, 3874-76, 3888-89. Nevertheless, the Act does contemplate federal control in certain areas. The area of federal control relevant to this controversy is 31 U.S.C.A. § 1243 which provides the mechanism whereby the Treasury Department can insure that Federal Revenue Sharing Funds are expended in accordance with the requirements of the Act. Section 1243 (a)(4) provides that in order to qualify for Federal Revenue Sharing Funds, a state or local government must establish to the satisfaction of the Secretary of the Treasury that it "will provide for the expenditure of amounts received under subchapter I of this chapter [Federal Revenue Sharing Funds] *only in accordance with the laws and procedures applicable to the expenditure of its own revenues.*" (Emphasis supplied).

Therefore, 31 U.S.C.A. § 1243 (a)(4) mandates that, for the purposes of the appropriation and expenditure of Federal Revenue Sharing Funds by states and local governments, these federal funds, in effect, lose their identity as Federal Revenue Sharing Funds and are to be treated in the same manner and expended according to the same laws as any other unearmarked revenues or funds that are collected or received by a state or local government. The language of 31 U.S.C.A. § 1243 (a)(4) is crucial in that it makes it clear that the federal scheme established by the Federal Revenue Sharing Act for the expenditure of these federal funds contemplates deferring to the laws and procedures of the states and local governments for the expenditure of their own revenues for the purposes of determining how Federal Revenue Sharing Funds are to be expended. Moreover, this statutory provision makes it clear that these funds are

not to be accorded any special status, solely because they are Federal Revenue Sharing Funds, when the respective laws and procedures for the expenditure of a state's or local government's own revenues are applied for the expenditure of Federal Revenue Sharing Funds. Rather, Federal Revenue Sharing Funds are to be treated the same as any other unearmarked revenues of a state or local government.

This Court's refusal to issue a Writ of Certiorari to the Tennessee Supreme Court to review the decision of that court and the consequential refusal to render a definitive interpretation of 31 U.S.C.A. § 1243 (a)(4) would only tend to perpetuate the erroneous construction and application of this statutory provision by the courts of the State of Tennessee and would facilitate the potential that other jurisdictions would also construe and apply this provision erroneously.

B. The Tennessee Supreme Court disregarded the federal mandate set forth in 31 U.S.C.A. § 1243 (a)(4) of the Federal Revenue Sharing Act for the expenditure of Federal Revenue Sharing Funds by a state or local government, therefore, its decision is in direct conflict with the Act.

The Tennessee Supreme Court in the present case was squarely faced with the issue of whether Federal Revenue Sharing Funds, once they have been appropriated to the county school fund, must be apportioned according to the same law and procedure applicable to the apportionment of local revenue appropriated to the county school fund. While local revenue appropriated to the county school fund must be apportioned according to the provisions of Tenn. Code Ann. § 49-605 (1977), the court held that Federal Revenue Sharing Funds appropriated to the same county school fund need not be so apportioned in accordance with the statute. The Tennessee Supreme Court reached an erroneous decision since it disregarded the federal mandate

established by 31 U.S.C.A. § 1245 (a)(4) that Federal Revenue Sharing Funds are to be expended by a state or local government only in accordance with the laws and procedures applicable to the expenditure *of its own revenues*. The law and procedure applicable to the expenditure of county revenues appropriated to the county school fund is Tenn. Code Ann. § 49-605 which provides in pertinent part:

> All school funds for current operation and maintenance purposes collected by any county, . . . shall be apportioned by the county trustee among the county, city and special school districts therein on the basis of the average daily attendance maintained by each during the current school year.

The Quarterly Court of Madison County, Tennessee, beginning in the fiscal year 1976-77 and continuing to the present time, began appropriating to the county school fund, for current operation and maintenance purposes, revenue derived from local sources and Federal Revenue Sharing Funds received from the federal government. Although the county trustee apportioned that portion of the school funds derived from county revenues in accordance with Tenn. Code Ann. § 49-605, the county trustee refused to apportion that portion of the school fund derived from funds received under Federal Revenue Sharing. The Tennessee Supreme Court's holding that the Federal Revenue Sharing Funds that were appropriated to the county school fund need not be apportioned in accordance with § 49-605 was based solely on the ground that these funds, being Federal Revenue Sharing Funds, were not within the scope of the statute. The court was led to this construction by its erroneous conclusion that 31 U.S.C.A. § 1243 (a)(4) of the Federal Revenue Sharing Act was not applicable to the determination of how Federal Revenue Sharing Funds were to be treated by states and local governments. Rather, the court concluded that the construction of state statutes, particularly Tenn. Code Ann.

§ 49-605, would be determinative. However, 31 U.S.C.A. § 1243 (a)(4) mandates that once a county elects to appropriate Federal Revenue Sharing Funds to its school fund that these funds lose their identity as federal funds and must be treated in the same manner and expended according to the same laws and procedures that apply to the expenditure of any other unearmarked revenues received by the county. This result is required by the Act. Therefore, the Quarterly Court of Madison County, Tennessee, once it had appropriated Federal Revenue Sharing Funds to the county school fund, should have apportioned these funds in the same manner as other county revenues appropriated to the school fund in accordance with Tenn. Code Ann. § 49-605. Otherwise, a direct violation of 31 U.S.C.A. § 1243 (a)(4) will result by the use of Federal Revenue Sharing Funds by the Quarterly Court of Madison County, Tennessee, in a manner different than the use to which other county revenues are applied.

CONCLUSION

The holding of the Tennessee Supreme Court disregarded the federal mandate set forth in 31 U.S.C.A. § 1243 (a)(4) that Federal Revenue Sharing Funds are to be expended by states and local governments only in accordance with the laws and procedures applicable to the expenditure of its own revenues. Moreover, there is a strong need for a definitive interpretation of this statutory provision since it is the sole provision that provides guidance to the states and local governments as to the laws and procedures that are to followed for the expenditure of Federal Revenue Sharing Funds.

For these reasons, the Tennessee Municipal League, as *amicus curiae*, respectfully requests this Court to issue a Writ of Certiorari in this matter.

Respectfully submitted,

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